

# EXHIBIT F

1  
2 SUPERIOR COURT  
J.D. OF STAMFORD/NORWALK AT STAMFORD

3 - - - - -x  
JAMAL NUSSEIBEH, JULIA NUSSEIBEH,

4 Plaintiffs, Index No.  
5 DN FST CV 17 6031573 S  
6 -vs-

7 LePATNER PROJECT SOLUTIONS, LLC,  
8 ET AL.

9 Defendants.

10 - - - - -x  
DEPOSITION OF BARRY B. LePATNER, ESQ., taken  
11 by Plaintiffs, on October 24, 2019, at 9:58 a.m., at  
12 the Spaces Center, 230 Park Avenue, New York, New York  
13 before Monique Cabrera, a Shorthand Reporter and  
14 Notary Public within and for the State of New York.

A P P E A R A N C E S:

DISERIO MARTIN O'CONNOR CASTIGLIONI, LLP  
Attorneys for Plaintiffs  
One Atlantic Street  
Stamford, Connecticut 06901  
Sharrington@dmoc.com

BY: SCOTT M. HARRINGTON, ESQ.  
(203) 358-0800

WINGET SPADAFORA SCHWARTZBERG, LLP  
Attorneys for Defendants  
One Canterbury Green  
201 Broad Street - Suite 1000  
Stamford, Connecticut 06901  
Cappello.J@WSSLLP.com

BY: JODY N. CAPPELLO, ESQ.  
(203) 328-1200

1  
2  
3 IT IS HEREBY STIPULATED AND  
4 AGREED that all objections, except as  
5 to the form of the question, be and  
6 the same are hereby reserved to the  
7 time of the trial;

8 IT IS FURTHER STIPULATED AND  
9 AGREED that the within deposition may  
10 be sworn to before any Notary Public  
11 with the same force and effect as if  
12 sworn to before a Judge of this Court;

13 IT IS FURTHER STIPULATED that  
14 the transcript is to be certified by  
15 the reporter.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 B. Lapatner

2 B A R R Y B. L E P A T N E R, ESQ. called as a  
3 Witness, having been first duly sworn by  
4 Monique Cabrera, a Notary Public within  
5 and for the State of New York, was examined and  
6 testified as follows:

7 COURT REPORTER: Please state your  
8 name and address for the record.

9 THE WITNESS: Barry B. LePatner.  
10 Office address is 10 East 40th Street, New  
11 York, New York 10016.

12 EXAMINATION

13 BY MR. HARRINGTON:

14 Q Good morning, Mr. LePatner. My name  
15 is Scott Harrington. I represent the plaintiffs,  
16 Jamal and Julia Nusseibeh, and 707 IF, LLC, in this  
17 case.

18 I understand that you are an  
19 attorney?

20 A Yes, sir.

21 Q How long have you been an attorney,  
22 approximately?

23 A Over 40 years.

24 Q And have you ever had your deposition  
25 taken before?

1 B. Lapatner

2 A Yes, sir.

3 Q How many times approximately?

4 A Maybe four to five.

5 Q Have you taken depositions as an

6 attorney?

7 A Yes.

8 Q So you are generally familiar with

9 the process?

10 A Yes.

11 Q Briefly, because sometimes it's  
12 different when you're an attorney than when you are  
13 a witness, but obviously, the Court Reporter is  
14 taking down anything that anybody says in the room.  
15 She can only take down one person at a time, so it's  
16 best to try and wait until I finish my question  
17 before you answer. She can't take down nods or  
18 gestures, so you have to answer everything audibly.

19 If you need to take a break for any  
20 reason, just ask me to take a break. The only thing  
21 that I ask you is that if there is a question  
22 pending, that you answer the question before we take  
23 the break.

24 A I understand.

25 Q So you are an attorney; correct?

1 B. Lapatner

2 A Yes.

3 Q And where did you go to undergraduate  
4 school?

5 A I went to undergraduate school at  
6 Brooklyn College. I then went to Brooklyn Law  
7 School and right after law school I commenced my  
8 legal career.

9 Q You are currently employed by  
10 LePatner & Associates, LLP?

11 A Yes. It's a firm I've had for just  
12 under 39 years.

13 Q So you have been practicing at  
14 LePatner & Associates, LLP for 39 years?

15 A It had other names sometimes along  
16 the way.

17 Q But it's been a firm that you have  
18 been a principal of since you started?

19 A I have been a principal for all of  
20 those years.

21 Q Did you work at any firms before  
22 LePatner & Associates or any of its predecessors?

23 A I was a partner at Wilson Elser  
24 Edelman & Dicker. They're in New York City, but  
25 they have offices across the country and around the

1 B. Lapatner

2 world.

3 Q Did you have any other legal jobs  
4 prior to Wilson Elser?

5 A Before I joined Wilson Elser I was in  
6 the enforcement department at the New York Stock  
7 Exchange.

8 Q The enforcement department?

9 A The enforcement department.

10 Q Was that your first job out of law  
11 school?

12 A First job out of law school.

13 Q What type of work did you do at  
14 Wilson Elser?

15 A Well, they represented essentially  
16 insurers of every stripe. So I focused on probably  
17 three major areas, where I was involved in major  
18 cases: One, legal malpractice. I defended many,  
19 many lawyers; two, I was involved in the title  
20 reinsurance business of Lloyds of London; and three,  
21 I was involved heavily in representing architects  
22 and engineers all over the country who were subject  
23 to malpractice claims, errors and omissions.

24 Q Approximately how long were you at  
25 Wilson Elser?



1 B. Lapatner

2 A Seven years.

3 Q After law school, have you had any  
4 other formal further education in any field?

5 A Nothing formal.

6 Q Anything informal?

7 A If you count all the CLE classes that  
8 I have attended. I have taught CLE classes. I did  
9 a program around New York State on legal malpractice  
10 with David Siegel. I have spoken on topics related  
11 to instructions and infrastructure widely across the  
12 country, probably if you Google me it would be a lot  
13 easier to see the rest of the resume.

14 Q Do you have any training, outside of  
15 legal training, any training in the construction  
16 field?

17 A If you mean formal training, have I  
18 taken a specific course, no, but I've had the  
19 wonderful experience of working with some of the  
20 best experts in the country on countless cases; that  
21 was a tremendous predicate to the last couple of  
22 decades as a construction lawyer and advisor.

23 Q Do you have any training in  
24 architecture or engineering?

25 A No.

1 B. Lapatner

2 Q So you don't hold any licenses or  
3 anything like that as a design professional or an  
4 engineer or an architect?

5 A Only having been graced by the AIA as  
6 being given the title of honorary AIA member.

7 Q When did you get that honorary  
8 membership?

9 A 2003.

10 Q You're licensed as an attorney in New  
11 York; correct?

12 A Yes.

13 Q Any other states?

14 A I won't count pro hac vice where I  
15 have been admitted for trial purposes in numbers of  
16 states over my career. I am admitted in numbers of  
17 -- besides the Southern District and the Eastern  
18 District of New York, numbers of other courts where  
19 I've had either trials or matters that I applied for  
20 licenses.

21 Q Do you have any current licenses,  
22 aside from federal courts in any states?

23 A Not that I'm aware of, no.

24 Q You are not licensed in Connecticut?

25 A No, I am not.

1 B. Lapatner

2 Q Have you ever been licensed in  
3 Connecticut?

4 A No.

5 Q Is anyone in your firm LePatner &  
6 Associates licensed in Connecticut?

7 A Currently, no.

8 Q Back in 2013, 2014, was anybody?

9 A I am not sure of the answer to that.

10 Q Do you recall what lawyers were at  
11 the firm in 2013 and 2014, other than yourself?

12 A I think there were about four or five  
13 other lawyers, four other lawyers, five.

14 Q Do you remember their names?

15 A Ron Feingold, F E I N G O L D; Jeff  
16 Kleiner, K L E I N E R. There may have been several  
17 names that I don't recall.

18 Q Are Mr. Kleiner and Mr. Feingold,  
19 were they admitted in Connecticut?

20 A Not to my knowledge.

21 Q Are they still with your firm?

22 A No. One is retired and one has  
23 become a general counsel for an insurance company.

24 Q Are you also affiliated with LePatner  
25 Project Solutions, LLC?

1 B. Lapatner

2 A Yes. This is a project management  
3 company that I formed many years ago to provide  
4 project management services to our clients.

5 Q What, if any, is the connection  
6 between LePatner Project Solutions, LLC and LePatner  
7 & Associates, LLP?

8 A The project management company is an  
9 affiliate, an associate of the law firm, and works  
10 hand and glove in many, many respects because so  
11 many of our clients want the expertise of the  
12 project management, either on individual situations  
13 that arise during their construction or when we do  
14 contracts for our clients for projects of scale.  
15 They often turn to us and say, "We want you to  
16 manage the projects as well."

17 So we do that for our clients in  
18 conjunction with providing the contract  
19 negotiations, the business advice and services,  
20 putting together the insurance packages and the  
21 like.

22 Q So you mentioned project management  
23 services, is that what LePatner Project Solutions is  
24 limited to or is it something broader than that?  
25 Generally describe the type of services?

1 B. Lapatner

2 A In general, when we are retained by a  
3 client for project management services that are  
4 provided through LPS, LePatner Project Solutions,  
5 the client is asking us to help them in the range of  
6 services that sometimes includes helping them do the  
7 due diligence and hire the team members, negotiate  
8 their contracts, assist them in putting together a  
9 schedule with team members, assist them in  
10 overseeing the design and overseeing the course of  
11 the construction of the project all the way through  
12 to occupancy.

13 Q During 2013 and 2014, did LePatner  
14 Project Solutions have employees?

15 A Yes.

16 Q How many employees did it have?

17 A I believe the two at that time were  
18 Brad Cronk, C R O N K, and Francisco Rivera and, of  
19 course, I was the principal of the firm.

20 Q Are both of them still employees  
21 today?

22 A Brad Cronk just left in the last few  
23 months. He has become a developer, I trained him  
24 for it. And Francisco still works for us.

25 Q Do you have any employees now in

1 B. Lapatner

2 addition to those two, in addition to Francisco?

3 A Yes.

4 Q How many employees do you have now?

5 A One other.

6 Q Who do you have?

7 A His name is Christopher Reynolds, R E  
8 Y N O L D S.

9 Q What training did or does Mr. Cronk  
10 have? What is his background?

11 A He's a licensed architect.

12 Q And he was a licensed architect in  
13 '13 or '14?

14 A Yes, all of his career.

15 Q Do you know whether he was licensed  
16 in Connecticut?

17 A I wouldn't know that information,  
18 what states he was, because previously he had worked  
19 for architectural firms that did work in and outside  
20 of New York.

21 Q Does LePatner Project Solutions  
22 engage in providing architectural services for it's  
23 clients?

24 A Absolutely not.

25 Q Did it every do that in 2013 or '14?

1 B. Lapatner

2 A It has never provided design services  
3 of any kind.

4 Q Do you recall when you hired  
5 Francisco Rivera?

6 A I don't recall the year, no.

7 Q Mr. Rivera testified at his  
8 deposition that he was hired shortly before the  
9 Nusseibeh project?

10 A To answer your question, I believe he  
11 was working on a prior project before he was put on  
12 to the Nusseibeh project.

13 Q Do you remember what project that  
14 was?

15 A He had several going at the same  
16 time.

17 Q What's your understanding of Mr.  
18 Rivera's background?

19 A He had worked extensively in Chicago  
20 for an architectural firm or a design firm but I  
21 think it was an architectural firm, and he had been  
22 involved in the actual project management,  
23 construction phases of numerous projects, which is  
24 why he was of great interest to us and proved to be  
25 a valuable individual in helping us on these

1 B. Lapatner

2 assignments.

3 Q Is LePatner Project Solutions a  
4 licensed home improvement contractor in any  
5 jurisdiction?

6 A No.

7 Q So not licensed in Connecticut as a  
8 home improvement contractor?

9 A No.

10 Q And were not in 2013 or '14?

11 A No. We don't do construction.

12 Q None of your people do any physical  
13 construction; is that correct?

14 A No. I may have once carried a board  
15 upstairs for a client, but no. Ours is an oversight  
16 function and a consultancy and advisory in nature.

17 Q When did you first have contact with  
18 the Nusseibehs?

19 A I don't remember who initiated the  
20 introduction. I have no recollection of how they  
21 came to involvement, but I was asked to come and  
22 visit the site at 35 Andrews Farm in Greenwich,  
23 Connecticut. I believe I met both of them the first  
24 time when I went up there for a visit.

25 Q Do you know if they had reached out



1 B. Lapatner

2 to you or --

3 A I wouldn't have known about their  
4 situation without somebody asking them to contact me  
5 because they had a difficult construction problem.

6 Q So I presume they contacted you by  
7 phone. Do you remember the first contact?

8 A I assume that.

9 Q You don't remember the date?

10 A I wouldn't.

11 Q Do you remember, did you have  
12 conversations before you had a meeting up at the  
13 property?

14 A I can only assume when somebody  
15 reaches out to me, any perspective client, we have a  
16 conversation, and I try to understand what their  
17 problem is or the level of distress. They're  
18 referred to me because I have done a lot of this  
19 over the years.

20 Q Do you recall, whether it was on the  
21 phone or at that first meeting, what they told you  
22 about the situation that they had?

23 A I think it was Jamal. If Julie was  
24 on the phone, I don't remember. They explained they  
25 had a very difficult relationship with the

1 B. Lapatner  
2 construction management firm that they had hired,  
3 who had been doing work that they found was causing  
4 them a lot of problems and they had heard that  
5 that's what I get involved in a lot. They asked if  
6 I would come up and look at it for them and give  
7 them some thoughts on how they could proceed.

8 Q Did they reach out to you as an  
9 attorney?

10 MR. CAPPELLO: Object to the form.

11 A You would have to ask them. I  
12 wouldn't know their state of mind.

13 Q What did they ask you to do then?

14 A If I can come up and visit the site  
15 so that I could see what they had been experiencing.

16 MR. HARRINGTON: I am going to mark  
17 this. So if we can start at 22.

18 (E-mail sent 11/13/13 was marked as  
19 Exhibit No. 22 for identification, as of  
20 this date.)

21 Q Mr. LePatner, I am showing you what  
22 we have marked as Exhibit 22. Do you know what that  
23 document is?

24 A It's an e-mail I sent to both Julia  
25 and Jamal Nusseibeh on November 13, 2013.

1 B. Lapatner

2 Q On the top first paragraph it says,  
3 "It was good speaking to you today." Does that  
4 refresh your recollection as to when you first spoke  
5 to them?

6 A Well, yes, that's the date.

7 Q The third paragraph down you indicate  
8 that you want to inspect the project next Tuesday?

9 A Well, they had invited me up. They  
10 said we want you to do that after this discussion,  
11 because -- well, go ahead.

12 Q The heading down at the bottom  
13 indicates your name as Esquire and LePatner &  
14 Associates, LLP. Does that indicate to you whether  
15 you were reaching out to them or they were reaching  
16 out to you as a lawyer or as a member of LePatner  
17 Project Solutions or is that just on the bottom of  
18 all of your e-mails?

19 A The question about any involvement of  
20 LPS is never raised at this point. This was  
21 strictly they called me as someone recommended to  
22 them who does construction claims, construction  
23 litigation, construction advisory services for  
24 owners.

25 As a result of that discussion and

1 B. Lapatner

2 asking them questions, I was able to say the issue  
3 you are facing falls into these categories. That  
4 would be the beginning of a process regarding the  
5 nature of the extent of any claim you have against  
6 these people.

7 Q Had you reviewed any documents at  
8 this point in time?

9 A No.

10 Q The last sentence of the third  
11 paragraph talks about decisions as to -- well, I'll  
12 read it. "Decisions as to whether to detain York to  
13 complete the work or work directly with the  
14 subcontractors can be made as we more fully  
15 understand the project exigencies and how much work  
16 remains."

17 At least at this point in time was  
18 there any discussion about whether to keep York or  
19 fire York?

20 A You can't make that determination  
21 until you have spent considerable time understanding  
22 what the original scope of their work was,  
23 understanding the nature and extent of any  
24 deficiencies in their work, whether or not  
25 individual subs have caused the problems or all of

1 B. Lapatner

2 the subs have caused the problems or whether the  
3 construction management itself has been deficient in  
4 administering the project.

5 All of those factored in to an  
6 ultimate recommendation as to whether you keep some  
7 or all of them or, in some cases where we have had  
8 major problems on major projects, whether you work  
9 with that CM, if they are workable, and force them  
10 to complete and get everything right to avoid  
11 consequences which would be much worse for them.

12 Q Was it your understanding that York  
13 was a construction manager as opposed to a general  
14 contractor on this project?

15 A At that time I wouldn't have known  
16 one way or the other.

17 Q What is your understanding with what  
18 you know now? What is your understanding of what  
19 York was?

20 A They held themselves out as  
21 construction managers.

22 Q Not as a general contractor?

23 A They, to my knowledge, and I could be  
24 wrong, I would have to go back and specifically  
25 look, but to my knowledge, they did not have their

1 B. Lapatner

2 own contracting group. They oversaw subcontractors  
3 that they brought in.

4 I could be wrong, it's been six  
5 years.

6 Q I just want to make sure we are using  
7 the same terminology.

8 So, in your view, a general  
9 contractor would be one who does some work with its  
10 own forces?

11 A No. A general contractor provides an  
12 owner with a fixed price for the work; guarantees  
13 that all the work would be performed for that  
14 amount; does not disclose what prices he is paying  
15 his subcontractors because he is the one who is  
16 promising the completion for a specific amount and  
17 that way if he can force his subs to work faster,  
18 smarter or better and do it and save money off that  
19 fixed price, that's his profit.

20 A construction manager works on a  
21 transparent basis, on securing bids for each of the  
22 line items on a project: Brick work, steel,  
23 concrete, et cetera, et cetera, glass, all the way  
24 down. Works with an owner to pick the best price  
25 and the best subs, whose contract prices make up a

1 B. Lapatner

2 schedule of values which the owner knows about,  
3 against which requisitions each month as to the  
4 percentage of completion of each sub is listed, and  
5 the CM is responsible for overseeing them, but they  
6 have their own individual subcontracts, sometimes  
7 through the CM, sometimes through the owner, it  
8 depends on how it's set up, but it's disclosed what  
9 their line-item valuation is for their scope of  
10 work.

11 There's two different methodologies  
12 there.

13 Q Just following up on your answer  
14 before. To your recollection, York was operating  
15 more as a construction management and not as a  
16 general contractor; is that correct?

17 A The answer to that question is yes.

18 Q You chuckled. Is there a reason that  
19 you chuckled?

20 A Because they weren't managing very  
21 much.

22 Q Why do you say they weren't managing  
23 very much?

24 A The quality of the oversight, the  
25 quality of the work the subs performed fell far

1 B. Lapatner

2 short of what you would expect from an experienced  
3 overseer of subcontractor and vendor work.

4 Q At around the time of this Exhibit  
5 22, before you were out there, had there been any  
6 specific tasks that the Nusseibehs had asked you to  
7 do, anything specific?

8 A I hadn't been retained. I was doing  
9 a courtesy for them and whoever had referred them to  
10 me, to say: Let me inquire and see if I could give  
11 some thoughts on what your situation is; something  
12 that I am asked to do often.

13 Q You indicated in this Exhibit 22 that  
14 Mr. Cronk was going to come out with you at that  
15 meeting?

16 A Yes.

17 Q Did he, in fact, come out with you at  
18 that meeting?

19 A Yes, I believe he did.

20 Q Do you remember when that meeting  
21 took place?

22 A Shortly after this e-mail went out.

23 Q And where did you meet?

24 A I think we first were asked to meet  
25 them in the father's or the in-laws house, which was



1 B. Lapatner

2 right outside the gate before you got to the  
3 Nusseibehs, who were down the road. I think they  
4 met us there first to talk to us because they wanted  
5 to give us the lay of the land before we went over  
6 to the site where there were some workers, they  
7 didn't want to walk us through until we had a  
8 discussion.

9 Q Okay. The in-laws house or the  
10 parent's house was down the road from the project?

11 A Yes.

12 Q Who was at the meeting at the house?  
13 Who was present?

14 A I only remember Jamal was there for  
15 sure and I don't remember whether Julia was there  
16 from the outset or joined the meeting. They have  
17 young children. This was always a concern, to look  
18 after the children.

19 Q On your side it was Mr. Cronk,  
20 yourself and Mr. Francisco was still there?

21 A No, I am sure he was not at the first  
22 meeting. I don't recall him being at the first  
23 meeting.

24 Q Do you remember what you discussed  
25 while you were at the in-laws' house?

1 B. Lapatner

2 A I think they gave us a more detailed  
3 overview of the problem they had with York, which  
4 appeared to be extensive; and these were the  
5 problems that they could observe themselves.

6 Q Can you be more specific as to what  
7 you recall they said, the specific problems?

8 A Work was not being done in a timely  
9 fashion. Some subcontractors were on and off the  
10 job. They had started work on one project in the  
11 house, went over to another project, left that one  
12 going and they couldn't understand it. They evinced  
13 what owners often get frustrated about when  
14 construction projects go array.

15 Q Did they indicate their concern about  
16 being able to move into the house?

17 A They said they had been delaying  
18 moving into the house. We did not know what that  
19 meant at the time, but we understood that that was a  
20 concern of theirs.

21 Q Did they show you any documents at  
22 that first meeting?

23 A No.

24 Q How long were you at the in-laws'  
25 house before you went to the project?

1 B. Lapatner

2 A It couldn't have been more than a  
3 half hour.

4 Q Thereafter, did you go to the 35  
5 Andrews Farm Road project?

6 A I recall we went over to the house.  
7 They drove us over.

8 Q Do you remember who went over?

9 A I know Brad Cronk and I went over  
10 with Jamal. I just can't recall if Julia was there.

11 Q Were there any workers on site when  
12 you got there?

13 A I believe there were some workers  
14 walking through the site.

15 Q Did you talk to any of them?

16 A Of course not.

17 Q Was anybody from York there at the  
18 time that you were there?

19 A I don't remember.

20 Q Do you remember specifically what  
21 type of work was going on at the time?

22 A No.

23 Q What did you observe, in terms of the  
24 condition of the construction site at the time?

25 A To answer your question, I know that

1 B. Lapatner

2 we saw a great many things that were troublesome,  
3 that were at odds with good practice, and I believe  
4 we wrote to them a somewhat detailed roadmap for  
5 what issues they needed to get their arms around if  
6 they were ever to determine the nature and the  
7 extent of just how badly they were served by York.

8 Q Could you be more specific about the  
9 problems that you observed with the work that you  
10 observed at the time?

11 A I am sure there's a document that  
12 assumes I look at and says "there it is."

13 Q Sir, I am not hiding any documents.  
14 I will show you the documents. I want to know what,  
15 if anything, you recall as you sit here today, the  
16 first time you looked at the site that caused you  
17 concern?

18 A I just know we saw an awful lot that  
19 was not working in the best interests of Nusseibehs.

20 Q I am going to show you what was  
21 actually marked as Exhibit 2 in Mr. Rivera's  
22 deposition and I believe that this is an e-mail  
23 chain from November 18, 2013.

24 Do you recall this e-mail chain?

25 A No.

1 B. Lapatner

2 Q The subject line says, "This is going  
3 to be a big mess."

4 A I see it. I don't remember it, but  
5 it was prophetic.

6 Q You don't remember what you meant by  
7 that?

8 A What we had seen, what we had seen  
9 was nothing short of a big mess by someone who had  
10 been working there for a considerable period of time  
11 and not carrying out the duties that they should to  
12 properly work on a house of that caliber. It's a  
13 very well constructed house and it deserved a  
14 first-class work product. It was not there.

15 Q Do you know if this e-mail chain  
16 occurred before you actually physically saw anything  
17 down at the house though, which is what I thought,  
18 but if you're telling me that you think the big mess  
19 refers to what you say?

20 A I can't tell you without knowing the  
21 date that we were actually there.

22 I would be surprised if I was talking  
23 to Brad and Francisco on a telephone call and that  
24 they could comment like that without us having an  
25 eyes on. I could be wrong, but this would indicate,

1 B. Lapatner

2 the way we work together, that we were trying to  
3 grasp the extent to which this client had been  
4 victimized by a construction team.

5 (E-mail re documentation sent marked  
6 as Exhibit No. 23 for identification, as of  
7 this date.)

8 Q Do you know what Exhibit 23 is?

9 A I don't recall this document, but I  
10 recall the subjects that ultimately were involving  
11 our further investigation as time went on.

12 Q This e-mail was sent after the site  
13 visit; is that correct?

14 A Yes, that's what it says.

15 (Discussion held off the record.)

16 Q It also indicates in the first  
17 paragraph that it's based upon your visit and you're  
18 reviewing various correspondence and project  
19 documentation sent to us this week. Did the  
20 Nusseibehs send you some documentation sometime  
21 between the site visit and the time of this e-mail?

22 A Based on this, I would have to say  
23 yes.

24 Q Do you recall receiving documentation  
25 from them?

1 B. Lapatner

2 A No.

3 Q Do you recall early on in the project  
4 what, if any, documentation you reviewed?

5 A Well, they would have been in -- I  
6 think in the earlier document we asked them to  
7 gather some information. I can only imagine that  
8 they tried to gather what they could in a very quick  
9 time and they sent us what they had.

10 Q I understand that. Do you recall  
11 specifically anything that you reviewed during these  
12 first weeks of your involvement?

13 A No.

14 Q I know in the first paragraph you  
15 referred to your construction as a general  
16 contractor; do you see that?

17 A I see that.

18 Q Was your understanding that they were  
19 a general contractor, based upon the terminology we  
20 talked about earlier today?

21 A My understanding is they styled  
22 themselves as a general contractor.

23 Q Okay.

24 A Ultimately, they made themselves --  
25 they acted as a hybrid. They were neither this nor

1 B. Lapatner

2 that. What they were doing was syphoning money off  
3 of the Nusseibehs as they could, in whatever way  
4 they could.

5 Q In the second paragraph you say it's  
6 your belief that the general contractor must be  
7 dismissed immediately.

8 Do you see that?

9 A Yes.

10 Q You made that determination by a  
11 little over week after first being contacted; is  
12 that correct?

13 A That's what we do. We do the due  
14 diligence quickly and find out by asking questions  
15 that this was someone holding themselves out as an  
16 overseer of construction who did not have the  
17 requisite prior experience to do a project of this  
18 nature. That proved true on many levels.

19 Q Okay. What did you do to reach that  
20 conclusion?

21 A Let's disclose. Number one, I forget  
22 what the amount of the contract was, but let's call  
23 it a million dollars for a moment. It wasn't  
24 \$250,000. In my experience, I had never seeing  
25 someone holding themselves out as a general



1 B. Lapatner

2 contractor or construction manager for a million  
3 dollar project who could take an assignment of that  
4 nature, doing over major elements of a small castle  
5 and not have a set of approved, stamped, sealed  
6 construction documents prepared by an experienced  
7 team of architects and engineers. No one could  
8 provide that to us and the work was being done  
9 haphazardly by assigning electricians to go do this  
10 and plumbers to go do that, roofers to go off on  
11 that, and that is in and of itself so alarming as to  
12 immediately dismiss anybody as credible to be  
13 handling a project of that scale.

14 Secondly, I believe we found and it  
15 makes reference to that there wasn't any approved  
16 documentation filed with the local building  
17 authorities; a permit was not obtained for this  
18 work, and they were not licensed as general  
19 contractors to do this kind of work.

20 So there were increasing  
21 characterizations of things that send off alarm  
22 bells for us. We were alerting them that that  
23 should have been a big concern for them and not how  
24 they brought these people on.

25 Q You said they weren't licensed as

1 B. Lapatner

2 general contractors. What's your understanding of  
3 what licenses a general contractor needs to do work  
4 in the state of Connecticut?

5 A I think Francisco went down to the  
6 local building department and asked those questions.  
7 Nobody knew about this project. Nobody knew about  
8 any filings. Nobody had any drawings and they did  
9 not have a file on this. So as far as the Town of  
10 Greenwich was concerned, they did not know this  
11 project was underway.

12 So they certainly couldn't have  
13 opened files. They certainly couldn't have sent  
14 inspectors. They certainly couldn't have approved  
15 the plans and specifications for mechanical,  
16 electrical, plumbing, roofing; critical elements of  
17 a building that has been in their purview.

18 Q So when did Francisco go down to the  
19 town to check that information out?

20 A I'm sure, right after, in this period  
21 of time, before we were formally retained, he would  
22 that done that investigation.

23 Q But you don't know specifically?

24 A No. We were raising as many  
25 questions in this letter because it opened up doors

1 B. Lapatner

2 to other questions to be asked. It was just  
3 commenting on the alarming issues, many of which the  
4 Nusseibehs were not aware of.

5 Q What is your understanding, not in  
6 terms of dollars, but in terms of what work York was  
7 hired to do on the house?

8 A I would have to see the documents  
9 with a full scope, but they were doing serious work  
10 involving electrical systems and running wires;  
11 there were plumbing issues, there were boiler  
12 issues, there were roof issues, there were  
13 partitions issues, there were finished- trade  
14 issues, there were gardening issues -- I don't mean  
15 gardening, I mean running pipes and doing things  
16 that involved work in their garden areas. There was  
17 a garage carriage house, where there was an  
18 apartment above it, illegal. They were working on  
19 it without plans and specs.

20 That's a pretty good overview of an  
21 awful lot of work that was being done.

22 Q There were no physical additions  
23 being done to the house though, is that correct,  
24 like not to the footprint?

25 A Not to my knowledge.

1 B. Lapatner

2 Q The apartment over the garage was  
3 over the existing footprint of the garage; correct?

4 A Yes. I don't know whether they  
5 extended the roof line a little bit or not. I would  
6 have to go back and look, but it was a large series  
7 of apartments for someone in the family that they  
8 intended to have up there. It was not a brother.  
9 It wasn't a brother or a sister. It was someone,  
10 relatives who visited or whatever. I don't recall.  
11 That's because they were putting bathrooms in there.

12 Q When you say that you can't do that,  
13 why are you saying that?

14 A First of all, you would have to get a  
15 permit for that from the town and most towns in  
16 suburban areas in the Metropolitan area don't  
17 blindly grant those kinds of additional small homes,  
18 because they're self-contained apartment units and  
19 there is a process to that because there are zoning  
20 issues that often come up.

21 Q So you found that at some point in  
22 time, LePatner, you or somebody who works for you,  
23 found that there were no permits for that particular  
24 work for the garage apartment; correct?

25 A For anything.

1 B. Lapatner

2 Q For anything?

3 A That York was doing. They hadn't  
4 filed with the buildings department for approval, to  
5 our knowledge. We went down there, we asked the  
6 questions, and that was one thing we had to address  
7 with the Nusseibehs and with the authorities.

8 Q While you were on the project were  
9 more permits applied for?

10 A I believe so. I believe Francisco  
11 was down there numbers of times to provide  
12 explanations to the authorities why that amount of  
13 work had been going on and nobody had done what they  
14 should have in terms of applying for permits.

15 Q At the time of this letter, this  
16 e-mail, Exhibit 23, the Nusseibeh had not yet  
17 retained you in any way; is that correct?

18 A I don't know formally the dates.

19 MR. HARRINGTON: Mark this as 24.

20 (Response to E-mail, Exhibit 23 was  
21 marked as Exhibit No. 24 for identification,  
22 as of this date.)

23 Q For the record, this appears to have  
24 attached to it Exhibit 23. It appears to be the  
25 e-mail that you had just looked at as Exhibit 23,

1 B. Lapatner

2 the bottom of this.

3 A Oh, this is just -- essentially, this  
4 is Jamal's response to that e-mail.

5 Q That's what I was asking you.

6 A It appears to be.

7 Q Do you believe that's the response to  
8 your e-mail?

9 A It appears to be, yes.

10 Q Do you recall receiving this at the  
11 time?

12 A No.

13 Q Do you have any reason to believe  
14 that you did not receive it?

15 A I would not question if it was in our  
16 files that we received it.

17 Q So in the second paragraph he is  
18 asking you, one, about your fee structure. You see  
19 that in the second paragraph?

20 A Yes.

21 Q And he is also asking you about he  
22 understands there's some legal component and some  
23 project management component of the work that  
24 LePatner and some entity was going to do; correct?

25 A I see that.

1 B. Lapatner

2 Q Did you have a discussion with him  
3 about what services you could offer to him?

4 A Well, we would have, I would have  
5 introduced Brad as the head of LPS. He is not a  
6 lawyer so I would have not introduced him as that,  
7 but there are the issues involving the quality of  
8 the work that encompassed all the things that  
9 LePatner & Associates does on a daily basis for  
10 their clients, looking at things and determining  
11 whether we should be hiring a team of experts to  
12 look at something, to understand whether it was done  
13 right or not; looking at a whole slew of business  
14 issues for owners as well.

15 There are things that LPS does, in  
16 terms of coordinating all the disparate design and  
17 construction issues that provide a separate group of  
18 services. So we would have explained that there  
19 were two separate elements that have to be in  
20 conjunction with on another so they could find out  
21 and make decisions.

22 Q Okay. But the two separate elements,  
23 one is under LePatner & Associates, which is a law  
24 firm; correct?

25 A That's correct. It's a law firm that

1 B. Lapatner  
2 provides business advisory services for clients who  
3 are either planning projects or have gotten  
4 themselves into bad situations.

5 Q The law firm focuses its practice on  
6 construction-related issues; correct?

7 A Yes, that's exactly what we do.

8 Q The conversation you had with the  
9 Nusseibehs was that you could handle those legal  
10 aspects.

11 MR. CAPPELLO: Objection to form.

12 A That came within the purview of what  
13 LePatner & Associates does.

14 Q And you mentioned to him that you had  
15 the construction management services; correct?

16 A The affiliated firm of LPS.

17 Q And he was asking you for a better  
18 understanding of sort of, I guess, those two  
19 different aspects of your representation; is that  
20 correct?

21 MR. CAPPELLO: Objection to the form.

22 A I believe he was asking us to submit  
23 proposals so that we could talk about what we could  
24 do for them.

25 Q He also mentioned to you, at the



1 B. Lapatner

2 bottom of the second paragraph, that he is going to  
3 be traveling for most of December; do you see that?

4 A I see that.

5 Q Do you recall that he was traveling  
6 when you came on board?

7 A He was always traveling. There were  
8 frequent times during the course of our  
9 representation that he would be outside of the  
10 jurisdiction, whether it was domestically or  
11 foreign.

12 Q So he was asking the question about  
13 the legal aspect of the project management aspect.  
14 What, if anything, did you explain to him about  
15 that? Anything in addition to what you already  
16 testified to?

17 A I explained to him that we were an  
18 advisory firm, explained to him the different  
19 ramifications of the situation that he and his wife  
20 had gotten themselves into.

21 Q Did you have any discussions about  
22 your experience in these areas? Did you tell him  
23 anything about the type of work that you did?

24 A Whoever had referred me to him, I am  
25 sure had given him an understanding of who we are

1 B. Lapatner

2 and certainly the discussions that we had after  
3 observing it alerted him that we had discovered  
4 many, many new things that he did not know about,  
5 even though he was there regularly.

6 I think he understood that we had a  
7 very comprehensive background, to try to help him  
8 resolve the deep hole that he and his wife were in.

9 MR. HARRINGTON: Well, let me mark  
10 the next exhibit.

11 (Whereupon, a recess was taken.)

12 (Defendant's Exhibit No. 25 was so  
13 marked for identification as of this date.)

14 MR. HARRINGTON: Back on the record.

15 BY MR. HARRINGTON:

16 Q I am showing you what we have marked  
17 as Exhibit 25. Do you know what this is?

18 A It's an e-mail, second on that day,  
19 November 22, from Jamal Nusseibeh to me -- I am  
20 sorry, it's from me that day, the same day, to Jamal  
21 and Julia, indicating that we will send out  
22 proposals, as they requested, for assisting them on  
23 their residence.

24 Q You indicated that you have a  
25 separate proposal for legal and project management

1 B. Lapatner

2 services; is that correct?

3 A I believe we provided that to them.

4 Q You also indicated in the second  
5 paragraph you'll detail every step of the process on  
6 a proposed timeline for completion?

7 A Yes.

8 Q Did you do that?

9 A I would have to look at the proposals  
10 to see and confirm, but I believe we did give them a  
11 detailed road map, a rather extensive one at that.

12 Q I am showing you what we marked  
13 previously at Mr. Rivera's deposition as Exhibit 1;  
14 do you know what this is?

15 A This is the proposal from LePatner  
16 Project Solutions, dated November 24, 2013.

17 Q Did you draft this proposal?

18 A I am certain this is drafted in  
19 conjunction with Brad Cronk. I am not sure about  
20 Francisco's involvement, but I am sure we looked  
21 over this, discussed the problems and drafted this  
22 detailed outline of issues that they should -- that  
23 we recommended should be confronted.

24 Q Is this a form that you use or is  
25 this specific to this project?

1 B. Lapatner

2 A It's specific to this project.

3 Q Do you know if there is a separate  
4 proposal that you did for any legal work?

5 A I don't recall. I would have to have  
6 him show me if there is a legal retainer for that  
7 work.

8 Q I have not seen a legal retainer. I  
9 am just asking if you recall one?

10 A I don't believe there was one. I  
11 believe we were coming there to clean up this mess.

12 Q When you say you were coming there to  
13 clean up this mess, what is this mess you are  
14 referring to again?

15 A I went through all of this. They had  
16 been fleeced by somebody holding themselves out as a  
17 contractor.

18 Q So you are referring to this mess,  
19 which you spell out in the proposal?

20 A That is correct.

21 Q Did you ever advise the Nusseibehs to  
22 seek separate counsel to review this agreement  
23 before they entered into an agreement with you?

24 A When we understood the breadth and  
25 extent of the breaches and the illegality of what

1 B. Lapatner

2 York did, I recommended that they hire Wiggin &  
3 Dana.

4 Q Did you do that in writing?

5 A I don't recall, but I know  
6 specifically I told him: You should be starting  
7 litigation at some point because you have enough  
8 documentation -- this is down the road a bit,  
9 because it took us months and I personally dealt  
10 with one of York's principals quietly to urge him to  
11 send this information so I could understand how we  
12 could pay him what he was owed, all in the guise of  
13 getting him to reveal more and more how he  
14 improperly dealt with everything on the project.

15 Once we had gotten that, I said, "You  
16 should be starting a lawsuit in Connecticut." We  
17 have worked in the past with Wiggin & Dana, who is a  
18 pretty responsible established firm. I called a  
19 partner at Wiggin & Dana and asked him if he had  
20 construction counsel experience and he said, "Yes,  
21 we do" and so on. I said, "Good, I am going to be  
22 recommending you for this matter that we had," which  
23 I outlined in one sentence and he said, "We would be  
24 happy to do it."

25 I recommended it to Jamal more than

1 B. Lapatner

2 once after that. I said, "You can start your  
3 lawsuit against them, you have enough."

4 Q Going back though to November 24 of  
5 2013, if you look at the last page of that, at some  
6 point in time the Nusseibehs signed this; is that  
7 correct?

8 A It appears to be so, yes.

9 Q Did you advise them orally or in  
10 writing at any time prior to November 27th, 2013,  
11 that before entering into this agreement, they  
12 should seek to have other counsel review this  
13 agreement?

14 A Everything Jamal did, to my  
15 knowledge, was discussed with his father and his  
16 accountant Daniel Rosen.

17 Number two, to my understanding,  
18 Jamal was a lawyer. I forget whether Julia was also  
19 a lawyer, I don't remember, but they certainly made  
20 it clear to me that they had legal backgrounds.

21 Q I understand. My question is: Did  
22 you advise them to have separate counsel look at  
23 this before they entered into this agreement?

24 MR. CAPPELLO: To the form.

25 A I don't recall.

1 B. Lapatner

2 Q If there was something in writing to  
3 that effect, would it have been in your files?

4 A I wouldn't know that. I would assume  
5 they would refer this just the same as they would  
6 have referred the contract with York to legal  
7 counsel. I would assume a million dollar contract  
8 with York would have similarly been reviewed by  
9 their legal team or Jamal and Julia would have  
10 determined that they did not need outside counsel  
11 because they had legal backgrounds. I could not  
12 know what was in their minds.

13 Q I am not asking what was in their  
14 minds, I am asking you what you did.

15 A I am saying that I don't recall.

16 Q You referred to the York contract as  
17 a million dollars. Was it originally a million  
18 dollars?

19 A I don't recall what it was, but I am  
20 sure there's documentation that shows that it was an  
21 extensive contract because it grew through so-called  
22 change orders that they were being asked to pay.  
23 They were becoming alarmed because there was no  
24 documentation to support the change orders that they  
25 could put their fingers on, why they were being

1 B. Lapatner

2 asked to do this.

3 Q Did they tell you that, that they  
4 were becoming alarmed when the change orders were  
5 being presented?

6 A Yes, because we asked for them to  
7 show us what York was claiming they were owed, and  
8 they said, well, here is an original list of things  
9 and here are documents where they say they are owed  
10 much, much more.

11 I said, "Where's the backup? Where's  
12 the subcontractor line items?

13 "No, they just gave us something,  
14 which was this," and it was sketchy, to say the  
15 least.

16 Q So you had been given at least the  
17 documents purportedly to be the contract between the  
18 Nusseibehs and York?

19 A I believe so.

20 Q There's a reference in the second  
21 paragraph to the various materials you have provided  
22 us as to the scope of work to be performed. My  
23 question is going to be: Do you remember what it is  
24 they provided you at this point in time?

25 A I can't recall.



1 B. Lapatner

2 Q If they, in fact, provided you  
3 documents, would you have maintained them in your  
4 file in this matter?

5 A Yes, I would assume it would be  
6 there.

7 Q For documents related to LePatner  
8 Project Solutions, you retained documents on paper,  
9 electronically or how do you keep your documents or  
10 a particular matter?

11 A I am sure both.

12 Q You don't recall specifically on this  
13 one did you have paper and/or electronic?

14 A I am sure both. I have seen files  
15 and I have seen digital documents.

16 Q Have you provided what you have to  
17 your counsel in response to the discovery request?

18 A Completely, to my knowledge.

19 Q As you sit here today, do you have a  
20 recollection -- I know I asked you this question  
21 before to a certain extent, but do you have a  
22 recollection of what the scope of the work was that  
23 York was actually supposed to do on the Nusseibehs'  
24 project?

25 A Only in outline form. As I

1 B. Lapatner  
2 mentioned, they were doing work involving roof  
3 mediation. They were doing work involving boilers,  
4 gas lines, plumbing lines, electrical lines interior  
5 partition work and repositioning of rooms, doing  
6 work laying piping in the garden. They were doing  
7 work relating to that adjacent garage cottage, the  
8 residential portion above it. I think that  
9 represents an outline of the scope that I recall.

10 Q Your letter seems to break down what  
11 you're proposing in two phases. Do you recall  
12 having done that?

13 A Yes. It was informational.  
14 Information gathering was necessary to fully explain  
15 the nature and extent of York's involvement and  
16 identifying the extent of appropriate remediation to  
17 do the corrective work, what that would entail.

18 Q So you reiterate your prior advice  
19 that you think York should be dismissed immediately;  
20 correct?

21 A Based on what we had learned, there  
22 was no value in keeping them on because, A, they  
23 couldn't be trusted to do the right work. C,  
24 evinced a departure from any measure of standard of  
25 care to oversee a project like this and, D, they

1 B. Lapatner

2 weren't even there. There was a noticeable lack of  
3 principal attendance to oversee the work of the  
4 trades and that's a bad sign.

5 Q So from what you saw, York was not  
6 actually even on site?

7 A Or have a consistent project manager  
8 who was in control of the project.

9 Q You state in the paragraph under A,  
10 under phase one, that you have been unable to  
11 identify any previous work by this contractor that  
12 reflects the experience or qualifications. It goes  
13 on -- to assume the complexity of this project?

14 A Yes.

15 Q What, if anything, did you do to  
16 check out their qualifications?

17 A We spoke to them. We asked them to  
18 disclose the prior projects they had done and they  
19 were limited in nature, such that they could not  
20 tell us a project of this scale that they had worked  
21 on or a project of this quality, that represented  
22 the high level of quality.

23 Number two, we talked to the people  
24 down in the building department who had said they  
25 had only seen them involved in small projects.

1 B. Lapatner

2 Number three, we went online to  
3 identify projects and found, I don't recall  
4 specifically, but found projects that could not  
5 equate to something of this nature, but basically by  
6 talking to them, they, in a nice way, were having  
7 conversations. They explained that this was a  
8 project of a scale that was not like projects they  
9 had worked on.

10 Q You had done all this that you just  
11 stated, you had done this all of this before  
12 November 24th?

13 A Yes.

14 Q You had talked to the Building  
15 Department before November 24th.

16 A Well, Francisco lived in Connecticut  
17 at the time, so it was easy for him to go over. He  
18 lived in New Haven. It was easy for him to go over  
19 there and make the inquiries.

20 Q You did not personally check with the  
21 Building Department; is that correct?

22 A No.

23 Q Would Francisco be the only one from  
24 LePatner Project Solutions project to do that?

25 A He was the person who went and did

1 B. Lapatner

2 some of the checking.

3 Q He was the person on behalf of  
4 LePatner Project Solutions; correct?

5 A Yes.

6 Q We'll spend a little time on that  
7 document, so keep it in front of you.

8 Part B of phase 1 talks about a  
9 personal meeting with the principals of York. Did  
10 that ever take place?

11 A Yes, I met with one or both of those  
12 principals.

13 Q Do you remember their names?

14 A One was named Gerile, B E R I L E, I  
15 could be wrong. And the other gentlemen I spoke to  
16 I met at the site, because I think we walked at one  
17 point, just kind of familiarizing what you have been  
18 doing, to get the lay of the land from him and to  
19 try to understand his billings, because he was  
20 asking to be paid a lot of money.

21 I said, "If I am going to be able to  
22 explain this to Jamal and Julia, I need to  
23 understand what you did."

24 Q So at this time was York asking to be  
25 paid additional monies than what they had already

1 B. Lapatner

2 been paid?

3 A Yes.

4 Q Do you know the order of magnitude,  
5 what amounts they were looking to be paid?

6 A I'm sure it was six figures. Whether  
7 it was 150 or 350, it was a lot of money, because  
8 Jamal had stopped paying them weeks before.

9 Q He told you that?

10 A Yes, he told me that he paid them  
11 regularly because they were always insistent on  
12 being paid, I forget whether it was every two weeks  
13 or every four weeks. He had decided not to pay them  
14 at some point, and I think there was some  
15 documentation where he wrote to me and said:  
16 "Interestingly York hasn't come around asking me for  
17 payments with the regularity" -- he thought they  
18 were having guilt conscience or they were just  
19 giving up on the job. He couldn't understand why  
20 they weren't there like clockwork, like they had  
21 been up to that point?

22 Q At this point in time, had Jamal  
23 started paying subcontractors directly?

24 A I don't recall.

25 Q Do you remember that having happened

1 B. Lapatner

2 at any time before you became involved?

3 A I don't recall that.

4 Q Just flip the page. The top of the  
5 next page talks about recommending that you have  
6 interviews with each of the completion trades to  
7 ascertain various things. Did you, in fact, have  
8 those interviews with the completion trades?

9 A Yes.

10 Q Did you conduct those personally or  
11 did somebody else conduct them?

12 A I met with some of them. Brad and/or  
13 Francisco met with others and secured information  
14 about whether they were owed money, which was very  
15 important because subcontractors don't stay on the  
16 job if somebody hasn't paid them.

17 Q Were you also looking to see whether  
18 you would keep one or more of these subcontractors  
19 on the job to either finish their work or perform  
20 further work?

21 A Yes.

22 Q Do you remember which subcontractors  
23 you spoke to specifically? By subcontractors, you  
24 can refer to them as subcontractors or trade  
25 contractors, whatever it is.

1 B. Lapatner

2 A It's the same thing.

3 Q Do you understand what I'm referring  
4 to?

5 A It's the same thing. No, I don't  
6 specifically, but I dealt with all of them at one  
7 point or another in my regular visits to the site.

8 Q Did you determine whether any lien  
9 waivers had been obtained from any of these  
10 subcontractors prior to your involvement?

11 A We determined it, yes.

12 Q Had they?

13 A I don't recall at that point in time,  
14 because at some later point we secured the lien  
15 waivers, but I don't know who had given up to that  
16 point and who had not provided them.

17 Q You said that you had secured lien  
18 waivers. So once you came on the job you secured  
19 lien waivers from subcontractors or trade  
20 contractors?

21 A We had to know if they were paid and  
22 what they were paid for what services because the  
23 documentation was scarce, as far as York was  
24 concerned.

25 Q But my question is: Did you actually



1 B. Lapatner

2 secure lien waivers from one or more of these  
3 contractors?

4 A At some point yes, of course. I  
5 wouldn't have been able to stay on the job  
6 otherwise.

7 Q Subsection C, we are on page two of  
8 Exhibit 1, it says you were going to do a detailed  
9 survey of the work performed to date by York and  
10 compare it to the authorized scope and approved  
11 change orders. Did LePatner Project Solutions do  
12 that?

13 A Yes.

14 Q Did that result in a written  
15 document?

16 A Yes.

17 Q What is on that written document?

18 A Exactly what it says here, a  
19 correlation between the amounts that had been paid  
20 by the Nusseibehs to York and what was allegedly  
21 performed, what was not performed, amount of  
22 revisions that had to be made, that we had to go  
23 back and tell these people to do it over again.  
24 That survey was done and provided.

25 Q Do you remember when, in the course

1 B. Lapatner

2 of your involvement in the project it was provided?

3 A No. But I know a survey was done.

4 Q Did you ever advise on the percentage  
5 of completion of the work for each of those  
6 contractors?

7 A I don't recall how the survey was  
8 done, in terms of percentage of work or in terms of  
9 defective work that had to be declared worthless.

10 Q Just so I can understand what the  
11 survey should entail, so was it by contractor?

12 A Trade.

13 Q Okay. By trade. So you would have  
14 an electrician and you would say what they were  
15 supposed to do within -- this is for contractors or  
16 change orders; correct?

17 A For this scope of work and this  
18 amount of money, what had been done which was  
19 acceptable and what was done that was below standard  
20 and whether they should have been paid and owed  
21 \$5.00 or whether they were paid by York \$200 and you  
22 didn't get any value for that or you only got a 5.00  
23 value for that.

24 Q And LePatner Project Solutions  
25 provided that survey in this particular case?

1 B. Lapatner

2 A Yes, ultimately, because this is  
3 essential to understand or you're going to be very  
4 surprised if you ever think about trying this case.

5 When we took over the assignment of  
6 trying to get this project completed, week after  
7 week, month after month, we uncovered the full depth  
8 of the horrific and deficient work that York and  
9 these trades had done. Whereas it seemed like the  
10 wires had been wired and the plumbing had been  
11 installed and the gas lines had been done, we would  
12 find out, week after week, the true extent of how  
13 dangerous the conditions were existing that would  
14 have precluded the family from being allowed to move  
15 in, otherwise they would have been in danger of  
16 their lives.

17 So, when we uncovered something like  
18 that and we brought in experts to figure out what  
19 does this mean, while up to that point we might have  
20 thought 50 percent of the electrical or the piping  
21 was fine, we now learned that because we had a  
22 dangerous boiler condition that could have exploded  
23 one day, very close to it before we caught it, an  
24 extensive amount of work that previously might have  
25 been considered uncovered but acceptable, now went

1 B. Lapatner

2 off the charts and had to be totally replaced. That  
3 happened time and time again, to open up new cans of  
4 worms and would be explained to Jamal and Julia.

5 So this was not a project that went,  
6 "Oh, we have 30 percent to complete, let's complete  
7 the 30 percent and get them in."

8 That 30 percent went backwards to 60  
9 percent, then 50 percent, then 70 percent, and every  
10 time we would explain the problems that we  
11 encountered, we would go back to the clients, write  
12 them reports, and have to deal with the subs to do  
13 the corrective work or in some cases bring in other  
14 trades to address this continuing evolution of one  
15 disastrous aspect of the work after another.

16 Q So we'll break that down a little  
17 bit.

18 So you said week after week you were  
19 uncovering new things; is that correct?

20 A Could have been every two weeks, I  
21 couldn't tell you. If I look at the documents, it's  
22 all there. We have progress reports that explain  
23 the uncovering of major problems. It would be one  
24 thing if your clients had fallen into the hands of  
25 contractors who hired subs whose quality of work was

1 B. Lapatner

2 a little bit below par for the nature of what was  
3 promised, but what we uncovered was of such grossly  
4 negligent handling that it rose to levels of almost  
5 criminal negligence, and each of those things  
6 triggered implications for other trades because if  
7 you have to rip out walls, then the sheetrock guy  
8 who had been completed up to 50 percent, now has to  
9 go back and start over again, because he had to get  
10 access to pipes or electrical lines or conduit pipes  
11 and so on.

12 All of this was explained and all of  
13 this was time lined. All of this was shown to your  
14 clients who could not have been stupid. They are  
15 not stupid people. Were they understanding? No,  
16 that's another separate issue, but it was fully  
17 explained to them what a dangerous situation they  
18 had put themselves in by hiring York and letting  
19 York go on as long as they could without a set of  
20 architectural plans and specifications.

21 Q So you say it was explained to them  
22 whenever you uncovered these things; is that  
23 correct?

24 A Absolutely.

25 Q Who explained it to them?

1 B. Lapatner

2 A I did, Francisco did. We sent  
3 reports. If you haven't seen them in the record or  
4 you are just asking that for the purpose of  
5 extending this deposition, it's in the record.

6 Q The reports, you indicate there were  
7 reports; how often were reports prepared?

8 A It's whatever, you will see it in the  
9 record. I know there are detailed progress reports  
10 that we did specifically for that project for a  
11 period of time, covering a period of time. It's  
12 there. Anyone can see it. Any professional would  
13 know that they were done with detail, with an  
14 understanding of what was being uncovered and with  
15 an understanding of the depth of the miscreant  
16 activities that York perpetrated on those clients.

17 Q Continuing with Exhibit 1.

18 Part D of phase 1, it indicates that  
19 you are going to identify code provisions of the  
20 work, that the work must conform to and arrange  
21 necessary inspections or sign-offs.

22 Does that relate to your testimony  
23 about going to the town?

24 A I am only smiling. It is incredible  
25 that intelligent people like Jamal and Julia and

1 B. Lapatner

2 their parents who are actively involved in them and  
3 the money involved, would never have had  
4 professional architects and engineers and design  
5 professionals preparing a detailed set of drawings  
6 and specs before they undertook the work that they  
7 let York do. It's incredible, the negligence of  
8 this client in allowing that to happen is one level.  
9 Okay?

10 When we would say, they did not do  
11 this to code, every town has a code requiring how  
12 this has to be done, you don't have anything telling  
13 them about the code. They went off and did whatever  
14 they thought, which was in violation of how you  
15 would want to put a safe house together for a  
16 family.

17 They were like shocked. Oh. It's  
18 incredible how naive they were. And number two,  
19 compounding everything, they brought into the midst  
20 of our trying to get ahold of everything on this  
21 project, a man by the name of David Peer, who they  
22 said was a designer for them, who they gave discreet  
23 assignments to, that when we found out what he was  
24 doing, he was setting the project back further.  
25 Despite my telling Jamal and Julia numerous times to

1 B. Lapatner  
2 fire that guy because he is talking to the  
3 contractors about doing things that are, A, totally  
4 wrong and, B, against your interests and, C, since  
5 you want to get into the house, he is making more  
6 work for you that we are going to have to rip out.  
7 They kept him on.

8 So this was a client who was their  
9 own worst enemy. We tried to be very nice and  
10 professional about it. We tried to say, "Look, you  
11 are going to hold this up," they had an expectation  
12 that all of this was going to be done like this.  
13 And I only know that if you should dare to try put  
14 an expert on to testify in this case, he will get  
15 destroyed if he says that he believes we didn't  
16 perform properly to try and help these clients who  
17 are their own worse enemies. That will be shown and  
18 that will be established convincingly, through the  
19 best professionals you have ever seen come forward  
20 and testify that what we did was to try to put our  
21 fingers into the dyke while the clients were  
22 pounding more holes into it. Okay? That will be  
23 shown.

24 Q Did you ever advise the client in  
25 writing to terminate David Peer?



1 B. Lapatner

2 A I would have to go back to our  
3 records, but was it clear? Oh, yes, it was very,  
4 very clear, because we would walk around and say,  
5 what he just did over here for you by telling the  
6 contractor to do it, it has to be ripped out and let  
7 me tell you why and Jamal would agree. He did work  
8 in ripping out in the basement work that complicated  
9 things, setting it back weeks and months.

10 Q This was after you became involved in  
11 the project?

12 A Yes.

13 Q Was David Peer involved on the  
14 project before you became involved in the project?

15 A I believe so.

16 Q Going back to my original question:  
17 Did you identify code provisions that the work must  
18 conform?

19 A I answered yes.

20 Q Did you do that in writing?

21 A Yes. I am sure in our reports you  
22 are going to see reference to those especially  
23 dangerous conditions that we uncovered, that had we  
24 not, allowing that family to occupy that premises  
25 would have been criminal.

1 B. Lapatner

2 Q The dangerous conditions that you  
3 refer to, you referred to a gas leak?

4 A There were gas problems, there were  
5 boilers problems and there was one other situation.  
6 Not to mention the fact that they were doing  
7 electrical and plumbing work without licensed  
8 oversight, which don't ever let happen on your  
9 house.

10 Q Are you saying that the contractors  
11 that were there did not have licenses?

12 A I would have to check to see whether  
13 one or more of them did not have the requisite  
14 licenses, but anyone who is a licensed plumber,  
15 licensed, knows they have to schedule inspections by  
16 the town inspectors. No inspections were ever  
17 ordered by York or their professional  
18 subcontractors.

19 Q As you sit here now, you are not sure  
20 whether or not whoever was working for them,  
21 electrical, was licensed prior to that?

22 A I would have to review the records,  
23 if it was written. As I sit here now, I am not  
24 going to remember every detail of a very complicated  
25 situation for a client that made things worse for

1 B. Lapatner

2 themselves, but irrespective of how they behaved, we  
3 were trying to do the best for them to uncover the  
4 depth of the hole that they had dug for themselves.

5 Q Who is the expert who uncovered the  
6 boiler problems, the gas leak problems?

7 A I forget whether -- at some point we  
8 had problems with the boiler and the gas and we  
9 brought in engineers. I forget their names, but  
10 they were Connecticut licensed engineers, very  
11 skilled, who started investigating and uncovered one  
12 thing after another that we were tracking down and  
13 brought it to the attention of the trades involved  
14 and the clients.

15 Q Was it CES?

16 A I am not sure of the name. It's in  
17 the record.

18 Q Do you remember the name Russell  
19 Knuth, K N U T H?

20 A I remember Russell. I would not have  
21 remembered his last name.

22 Q You dealt with Russell on this  
23 project?

24 A Yes.

25 Q And they were brought in at

1 B. Lapatner

2 LePatner's recommendation?

3 A Yes.

4 Q Do you remember when they were  
5 brought in, in terms of time, from the time that you  
6 started; do you recall?

7 A Within months. It was not at the  
8 end, the very end of the time we were on the  
9 project.

10 Q You knew early on that the Nusseibehs  
11 had not had a set of architectural plans approved.  
12 You knew early on in the project that that was the  
13 case; correct?

14 A Yes, and we talked with them about  
15 shutting down the project until they got a licensed  
16 architect and engineers to do the right thing and  
17 they rejected that recommendation.

18 Q That was an oral recommendation or a  
19 written recommendation?

20 A I can't remember whatever was in the  
21 record, but we specifically talked to them about  
22 that at the outset, the first few weeks. We said:  
23 "You don't have the greatest subs here. They don't  
24 know what they are working from because they can't  
25 look to the specifications. You don't have a set of

1 B. Lapatner  
2 specifications. Everybody is doing what they think  
3 they should be doing to carry out a scope of work.  
4 That is not in your best interest.

5 I told them, get on this. If you  
6 want, we will recommend, there are wonderful  
7 architects and engineers in Connecticut, wonderful,  
8 you can interview them, hire them.

9 "No, we have to get into the house.  
10 Do whatever you can, as fast as you can, to get us  
11 into this residence. I am being pressured by my  
12 father or father-in-law. They can't understand why  
13 this is taking so long."

14 I said, "You know why it's taking so  
15 long, because you are here all the time watching and  
16 seeing what we are showing you."

17 He said, "I don't care. We have to  
18 do it. We are not going to stop this project."

19 Once again, the Nusseibehs proved to  
20 be their own worst enemy.

21 Q You had these conversations with  
22 them, did you have any written conversations with  
23 them?

24 A I don't recall, it's in there or it's  
25 not in there, but do I remember being told we are

1 B. Lapatner

2 not going to stop and bring on architects and  
3 engineers.

4 The conversation came up again with  
5 David Peer. "How are you letting this guy design  
6 things for you?"

7 He said, "Well, he said he is an  
8 experienced designer.

9 "Do you know where his design  
10 documents are?"

11 Jamal said, "No, I brought him into a  
12 room where David Peer had designed what he wanted  
13 the contractors to do on the wall and when we  
14 questioned him, he said, "Yes, they can build from  
15 that."

16 We are appalled that that is how work  
17 was being done, authorized by Jamal and Julia that  
18 all had to be done over because that guy did not  
19 know what he was doing either.

20 Q What type of work was he doing?

21 A He was designing things in their  
22 bedroom; he was designing some things in the  
23 basement; she had some bathroom designs, but it was  
24 like they would come up with some idea and go to him  
25 and he would start -- stay in the house all the

1 B. Lapatner  
2 time, without any design documents, without anything  
3 going for a permit, without anything that showed  
4 coordination of how the electrical mechanical  
5 plumbing would go together. And he was designing it  
6 by hand on the wall and your clients thought that  
7 was fine, against our recommendation to get rid of  
8 him.

9 Q Skipping down to E, phase 1, there is  
10 an indication here that you were going to discuss  
11 the retention of an architect and engineers who may  
12 be needed to repair detailed designs and documents;  
13 you had that discussion?

14 A As I said, yes, several time.

15 Q And you are saying they never wanted  
16 to retain an architect to do drawings; is that  
17 correct?

18 A Despite a lot of patience on my part  
19 to explain how that would benefit them, yes. If you  
20 see down below, in paragraph E like in Edward, what  
21 I had explained to them: "We will discuss with you  
22 the retention of an architect and engineers who may  
23 be needed to prepare detailed design documents for  
24 corrective or completion work, as well as to perform  
25 needed sign-offs to ensure the certificate of

1 B. Lapatner

2 occupancy:

3 "A certificate of occupancy," I  
4 explained, "(or substantial completion) is usually  
5 required from the town in regards to gas line work,  
6 septic system work, electrical, et cetera. We shall  
7 also inquire as to whether any of these inspections  
8 have been performed to date."

9 So early on we are telling them, this  
10 is how you are going to get to a completed project.  
11 How he ever got to those dates, because we left  
12 before the last things were done, most towns are not  
13 going to accept without being able -- to give you  
14 certificates of occupancy without being able to see  
15 what work was done on critical trades. That was  
16 good advice we gave them.

17 Q Going on, page 2 we get into phase 2,  
18 which is overseeing completion of the work. In  
19 general, what were you going to do? What was  
20 LePatner going to do for the Nusseibehs on  
21 overseeing completion of the work?

22 A It was determined that numbers of the  
23 trades brought in by York were not capable of  
24 performing at the level of the work to meet the  
25 Nusseibehs' requirements for the quality of the



1 B. Lapatner

2 house that they had. And as we identified, talking  
3 to the trades, all nice people, hard working, but  
4 not necessarily the caliber of the trades that we  
5 ever would have brought on to a project like that.

6 We said to them: "We would suggest  
7 we get rid of some of those trades because you're  
8 always going to have a problem with the caliber of  
9 their work. They're not capable of performing at  
10 the level that you want and that you deserve."

11 They specifically said: "We want you  
12 to keep them going, because if we have to go out and  
13 bring somebody else on it's going to slow us down  
14 and we are never going to be able to move in. We  
15 have to move in."

16 That was the one thing we heard all  
17 the time, "You have to give us a date, we have to  
18 move in."

19 We said: "If we are going to be on  
20 top of these people, because we're not going to  
21 accept inferior work on your behalf, we are going to  
22 make them do it over and over again, that is going  
23 to delay."

24 They said, "Stay on top of them.  
25 Stay on schedule. Get us to a completion date."

1 B. Lapatner

2 We said, "You are not going to get  
3 there with these people," but we were told to keep  
4 them on.

5 Q Which particular people did you  
6 recommend that they change, that they told you to  
7 keep on?

8 A I think, over time, I would have to  
9 check the records, but I know some of the critical  
10 trades. First of all, the painting guys were lovely  
11 guys, but they couldn't paint their way properly out  
12 of a good room. The plumbing people clearly were  
13 not acceptable for what they installed and what  
14 created a dangerous situation, and I would have to  
15 check the records to see whether the electrical  
16 people were also constantly redoing their work, who  
17 were identified.

18 Q Any other trades, when you say that  
19 there were people who you say were not up to snuff  
20 -- I am not using your words, but pretty much were  
21 not up to snuff, that you said that they should  
22 replace that they refused to replace?

23 A I am sure the records would show  
24 which ones we were constantly staying on top of to  
25 have redoing work.

1 B. Lapatner

2 Q By records it would be e-mails,  
3 letters, reports?

4 A Yes.

5 Q You talked about painters being  
6 lovely people, but weren't the caliber; do you  
7 recall which painters these were?

8 A I don't remember their names, but I  
9 can tell you that Julia and Jamal were screaming  
10 about how they did not do a room right and get them  
11 back to do it over again, and they saw it.

12 Q This is while you were on the  
13 project?

14 A Yes.

15 Q Not from prior work?

16 A No, no, no. They were very  
17 particular and they would tell us, "Get that trade  
18 back in there and do it over again."

19 Q So on phase 2, the bottom of page 2  
20 of Exhibit 1. Exhibit A, this contemplates you're  
21 going to meet with the subcontractor to see if  
22 they're okay to continue with; correct?

23 A Yes.

24 Q For those, you are going to identify  
25 a completion schedule for their work and incorporate

1 B. Lapatner

2 that into a coordinated schedule for completion?

3 A Yes.

4 Q Did you, in fact, do that?

5 A I believe we had schedules and  
6 schedules, as I mentioned, that were constantly  
7 being revised because of uncovering work that made  
8 us go backwards as opposed to moving towards  
9 completion with capable trades who knew how to stay  
10 on a schedule.

11 Q So you believe you had a completion  
12 schedule?

13 A Yes, we did have some dates where we  
14 expected the work to be completed by and we did have  
15 all of these events that were identified to Julia  
16 and Jamal as impacting those completion dates.

17 Q Did you use any kind of scheduling  
18 software to do the schedules?

19 A I don't remember.

20 Q Does LePatner Project Solutions use  
21 scheduling software?

22 A Sure.

23 Q What do you use?

24 A E-Builder, Microsoft Project  
25 Management -- I forget which set worked for which

1 B. Lapatner

2 projects.

3 Q Do you know if any was used for this  
4 particular project?

5 A I can't recall.

6 Q Continuing on the bottom of page 2,  
7 it says: "Subcontractors will be retained for the  
8 completion work under a written directive that calls  
9 for them to supply needed manpower that if not met  
10 will result in their termination."

11 Did you, in fact, prepare written  
12 directives for completion work to be performed by  
13 subcontractors?

14 A Yes. Each trade after being  
15 interviewed and after assuring us that they could  
16 stay on schedule, was given a schedule for work. We  
17 went through room by room what they would do to get  
18 to that end date.

19 Q This was a written directive?

20 A To the best of my knowledge.

21 Q Is it something that you would have  
22 done or is it something that Francisco would have  
23 done?

24 A Francisco or Brad, I forget who.

25 Q On this particular project, how much

1 B. Lapatner

2 time did Brad spend on this project?

3 A I think Brad would only come by  
4 occasionally, because he was the head of LPS Project  
5 Management Group and he had his own projects that he  
6 was heavily invested in. Sometimes I would say,  
7 "Come along with me, just take a look and see and  
8 either he and I or he and I and Francisco would walk  
9 through and just remark on the progress.

10 Q So in terms of LePatner Project  
11 Solutions though, the person in LePatner who would  
12 be preparing these written directives for the  
13 contractors would have been Francisco?

14 A More than likely the primary person.

15 Q And going on to the next page, which  
16 is part B of phase 2, you were going to develop a  
17 payment program based upon the percentage of  
18 completion of work?

19 A Yes.

20 Q Did that, in fact, happen?

21 A Yes. We had to review and recommend  
22 payment for work that was properly performed.

23 Q So LePatner Project Solutions was  
24 going to prepare, was going to approve payments to  
25 subcontractors?

1 B. Lapatner

2 A We would make recommendations but, of  
3 course, Jamal and Julia would walk around and they  
4 made their own determination whether they wanted to  
5 pay somebody or not. We weren't involved in the  
6 actual payment process. In fact, we didn't even  
7 collect up the requisitions.

8 Jamal made the decision to keep on  
9 his own personal owner's representative, I forget  
10 his name, a man who plugged himself down there every  
11 day, sat in the kitchen and dealt directly with the  
12 trades himself, on his own portfolio, whatever he  
13 was authorized by Jamal to do, and we would  
14 constantly say, "What is he doing on the job?"

15 Jamal would say, "I need him there.  
16 He is continuity for me because he remembers what  
17 happened before with York."

18 Another reason why, there was a lot  
19 of bosses running around, a lot of people telling  
20 the trades what to do and all of it was directed by  
21 Jamal, who had his own reasons.

22 Q So you're saying -- this is John  
23 Santoro was the person?

24 A John Santoro, thank you very much.

25 Q So your testimony is that John

1 B. Lapatner

2 Santoro was there because Jamal wanted him there?

3 A Not us. We didn't know who he was  
4 initially. He was not certainly under our purview  
5 to oversee work. He didn't do any work, and he  
6 reported to Jamal.

7 Q Are you saying you recommended to  
8 Jamal that he not be there?

9 A I said, "What is he doing?"

10 And the answer that was given was,  
11 "He has continuity. He has purview over certain  
12 things I want him to look at."

13 Fine, I am not going to argue with a  
14 client on something like that.

15 Q Did you have discussions with  
16 Francisco about his interaction with John Santoro?

17 A Yes, and Francisco, if you have the  
18 opportunity to ask him, he will tell you his own  
19 stories about dealing with John. A nice enough guy,  
20 but as much got in the way as he did provide some  
21 service that we never understood.

22 Q But it's your testimony that you did  
23 not want him there?

24 A We had no need for him. We didn't  
25 understand why he was giving instruction to trades,



1 B. Lapatner

2 and we certainly saw no reason for him being on the  
3 job, anymore than we saw there was a reason for Dave  
4 Peer on the job. You either want to complete the  
5 work or you want to find new jobs and assignments  
6 for contractors that were interfering with the  
7 actual performance of what you want done, which is  
8 let's get to some substantial completion.

9 Q What is your understanding of what  
10 John Santoro's background was?

11 A I just understood he had some  
12 construction background of some type. I never went  
13 into his resume. I was never asked to interview  
14 him. I would see him there when I came every week.  
15 We might chat. Most times in the winter he was  
16 freezing because there was never enough fuel in the  
17 fuel tanks or there were problems with the gas lines  
18 and with the boiler. There were times when the  
19 project was entirely jeopardized when the  
20 temperature in the house was below freezing, which  
21 means that any wood floors, any painting, anything  
22 that was a finishing trade could be totally undone  
23 because that three-store cycle is a disaster for the  
24 interior of a residence.

25 I am sure there will be enough

1 B. Lapatner

2 testimony saying we would report this to Jamal and  
3 we would bring this to his attention and somehow the  
4 house remained freezing cold in the wintertime.  
5 Again, something out of our control; something that  
6 affected the performance of the workers; and  
7 eventually we brought in Russell as an engineer who  
8 started to do whole analyses and explain what was  
9 going on and make recommendations.

10 Q Did the Nusseibehs agree with you to  
11 bring on Russell as an engineer?

12 A We said to him, "If you don't have a  
13 professional engineer in here to discuss why your  
14 whole boiler and heating system is not working, why  
15 we are experiencing other problems, and at some  
16 point I thought there was a report of gas leaks, but  
17 my memory is a little cloudy on that, which is what  
18 led to learning that the plumbing guy, the  
19 electrical guy, the gas trade had put the wrong pipe  
20 in the wrong place and we were this close to having  
21 an explosion and the whole house going up. I hope  
22 he has told you about that.

23 Q Part B, still on page 3, top of page  
24 3 of Exhibit 1 talks about determining on a  
25 case-by-case basis whether any subcontractors who

1 B. Lapatner

2 hadn't been paid should be kept on. Did that  
3 happen?

4 A I am sure it had to happen because at  
5 some point we had to continue to recommend how to  
6 keep these contractors going because we were told,  
7 "Keep them going. Don't fire them."

8 Q Well, at some point in time you  
9 recommended firing some subcontractors, correct?

10 A Yes, and we were told, "You do that  
11 and we are going to delay the work, right?"

12 I said, "Yes, because it's in your  
13 best interest, the same way we're recommending that  
14 nobody should be doing work without a set of plans  
15 and specifications or a licensed professional."

16 Each time we were told just to keep  
17 going forward.

18 Q You recommended terminating the  
19 electricians and the HVAC people and the plumbing  
20 people; correct?

21 A I believe, but I am not 100 percent  
22 certain, but I believe we made some recommendations.

23 Q And they actually followed those  
24 recommendations because you sent a letter  
25 terminating them; correct?

1 B. Lapatner

2 A I don't remember the specifics, but  
3 in some cases we did recommend and especially in  
4 light of what we found out with the boiler and the  
5 gas line, I believe some of those recommendations  
6 were heeded.

7 Q Do you recall any specific  
8 subcontractors by trade or by name that you  
9 recommended be removed that the Nusseibehs refused  
10 to remove?

11 A I don't recall.

12 Q Continuing on Exhibit 1, page 3,  
13 subsection C, it says: "Will provide you with a  
14 recommendation for a completion date to oversee the  
15 work of the completing trades to ensure that your  
16 move in will be accomplished on said date."

17 Did you do that?

18 A Well, remember, at some point we did  
19 come up with a completion date, and certainly  
20 removing subcontractors and terminating them, if  
21 Jamal approved and Julia approved, was going to push  
22 that date back and certainly the events I described  
23 to you were going to push that date back. So, yes,  
24 all that was done.

25 Q Do you remember the completion date

1 B. Lapatner

2 that you recommended?

3 A No.

4 Q Flip quickly to page 5. Just above  
5 where it says phase 3, it says: "However, barring  
6 any extensive issues that may impact the work, we  
7 believe that our interior work can be completed by  
8 no later March 15, 2015."

9 A I see that date, yes.

10 Q Was that a date that you came up, at  
11 least what you knew at the time of this letter?

12 A It had assumptions in there yet to be  
13 approved, numerous assumptions yet to be approved,  
14 all of which were detailed before that had to be  
15 investigated to see, but based on the percentage of  
16 completion, assuming normal trades could do normal  
17 work in a progression without having to go  
18 backwards, that's the date we said was possible we  
19 believed all interior work would be completed, yes.

20 Q Flip back to page 3. We are going to  
21 page 3.

22 What, in general, were you proposing  
23 to do in phase 3?

24 A There were so many shortfalls in what  
25 work we did that was out of the norm, trying to ever

1 B. Lapatner  
2 get your arms around what they had done for many,  
3 many months with their subs, lack of documentation,  
4 lack of specific scope, lack of ensuring that they  
5 were moving towards a completion based on licensed  
6 work that was going to be inspected, this was an  
7 open book. We did not know what we were going to  
8 encounter.

9 We knew it was going to be  
10 interesting because of what we had quickly adduced,  
11 but we could never have anticipated the true nature  
12 of how far they fell from any standard; and really,  
13 what we ended up doing was giving them a roadmap to  
14 sue these people for millions of dollars for being  
15 criminally negligent, almost leading to the  
16 explosion of the entire house, which is what our  
17 experts told us was very possible.

18 Q What experts told you that?

19 A I believe Russell and his team. I  
20 think we had some construction plumbing  
21 subcontractors who agreed with it.

22 Q That situation was rectified by early  
23 December of 2013; correct?

24 A I forget the date, but that problem  
25 was identified and immediately rectified, and it

1 B. Lapatner  
2 showed us the level of oversight that had not been  
3 performed by York or anybody in a responsible  
4 position and the reason why we were recommending  
5 licensed architects and engineers be brought on to  
6 do the right set of plans and specs and not have any  
7 work done on -- you know, this is the scope of work.

8 We had never seen someone be told to  
9 do a scope of work without a specific scope of  
10 detailed plans and specifications. The Nusseibehs  
11 tolerated an intolerable situation that threatened  
12 their family. We tried to do the best we could,  
13 despite the roadblocks they put in our way.

14 Q One of the roadblocks you said, one  
15 was David Peer, correct, he was a roadblock?

16 A One.

17 Q Another one was what you are  
18 testifying to, which is they refused to hire  
19 architects to complete a set of plans and  
20 specifications?

21 A They never hired, from day one,  
22 licensed architects and engineers to put into a set  
23 of construction documents what they wanted for the  
24 scope of work. It's unbelievable for intelligent  
25 people not to know that you need licensed

1 B. Lapatner

2 professionals to do this level of work.

3 Number 3, their due diligence for  
4 work must have been while they were sleeping because  
5 no one, no one would ever hire York for that project  
6 who had done any level of due diligence, and  
7 certainly York never would have been hired if they  
8 had licensed architects and engineers put those  
9 documents out for bid amongst several contractors,  
10 because they did not know how to put a bid together  
11 and they didn't provide a bid.

12 They didn't know how to put estimates  
13 together and they didn't provide estimates. They  
14 did not know how to coordinate their trades and no  
15 coordination was ever done. They did not know how  
16 to put together a schedule and no schedules were  
17 done. They did not know how to review the change  
18 orders that were coming in asking for more and more  
19 money on spurious grounds and none of those change  
20 orders were validly performed. They never submitted  
21 requisitions monthly that comported with the  
22 standard of care in our industry and none of them  
23 were ever done that way.

24 So when you talk about undermining  
25 their own case, they had no clue how they had been



1 B. Lapatner

2 sucked in to someone who defrauded them and acted in  
3 a way that threatened their entire family. They  
4 should be ashamed of themselves, that they put their  
5 family in jeopardy, with young children.

6 Q They weren't living in the house at  
7 the time; correct?

8 A That's correct.

9 Q They never lived in the house before  
10 you came on board; correct?

11 A I think that's correct. I think they  
12 bought the house a year earlier.

13 Q So they had not moved their family in  
14 prior to your involvement?

15 A That's correct.

16 Q I think you assigned York as being  
17 incompetent by even agreeing to undertake the work  
18 without a detailed set of drawings; correct?

19 A No competent contractor would ever do  
20 this kind of work without a set of plans and  
21 specifications from a licensed architect and  
22 engineer; to do so throws their competence into  
23 serious question, day one.

24 Q Subsection B, under phase 3, you talk  
25 about the contractor intentionally seeking to be

1 B. Lapatner

2 opaque as to how the work was being priced, paid to  
3 the subcontractors and coordinated. Is that  
4 basically what your testimony was just in the last  
5 minute or two?

6 A Yes.

7 Q Subsection C, you're identifying a  
8 lack of coordination and scheduling, but you refer  
9 to the prime examples being the plumbing and  
10 electrical work; do you see that there?

11 A Yes, I do.

12 Q At this point in time, what  
13 specifically were you referring to about the  
14 plumbing and electrical work that you felt showed a  
15 lack of coordination and scheduling?

16 A I believe, and the record would have  
17 to be reviewed, York had work being installed out of  
18 phase, that's the best way I will describe it. In  
19 order to move a project smoothly, what you want to  
20 make sure of is you don't have trades doing work  
21 that when the following trade comes in, you have to  
22 rip out their work because it was premature. Okay?

23 In my world, the whole issue of  
24 coordination of the subcontractors makes or breaks a  
25 project, okay? I have written books on this. I

1 B. Lapatner

2 have spoken around the country on this; that if a  
3 contractor does not know how to properly phase the  
4 work and coordinate the subcontractors with each  
5 other, you are going to have a project out of  
6 control in various places and what is called  
7 "rework" becomes the norm. That's what this case  
8 was about and when we talked to the trades they  
9 would say, "You just told us to go ahead."

10 "But you knew there was going to be  
11 work that..."

12 "Yes, but we were told to just do  
13 it."

14 That became another aspect of York's  
15 shortcomings and lack of control and coordination of  
16 their trades.

17 Q On the next page, page 4, the  
18 paragraph above "Fees." So directing your attention  
19 there, you were going to provide an analysis of the  
20 work in place, percentage of completion by the subs  
21 as of the date of York's termination, and a  
22 reconciliation of the monies paid for this work as  
23 compared to what was performed. It's your testimony  
24 that you provided that to the Nusseibehs; right?

25 A Yes.

1 B. Lapatner

2 Q Do you know when you provided it to  
3 the Nusseibehs?

4 A No, sir.

5 Q Was it after you were no longer  
6 involved in the project?

7 A I don't remember, but we had that  
8 information and we provided it to them.

9 Q Just under Fees, on Exhibit 1, page  
10 4, talks about how Francisco is going to provide the  
11 daily oversight on the project; is that what was  
12 done?

13 A Yes, it was done.

14 Q And you were going to oversee the  
15 entire project as the principal; correct?

16 A Yes.

17 Q Forensic accounting work was to be  
18 provided by Pamela Tulados. Is she somebody that  
19 worked for LePatner Project Solutions?

20 A Yes.

21 Q What type of experience did she have?

22 A She had experience working for  
23 companies like Kroll Associates. They were forensic  
24 investigators who would be sent in to analyze  
25 situations of potential fraud in a company,

1 B. Lapatner

2 situations of defalcations, and she had been  
3 involved in numerous of these investigations, so she  
4 knew how to collate and coordinate and put them into  
5 reports that were understandable.

6 Q What did she do on the Nusseibeh  
7 project?

8 A When we fed her the information that  
9 we got from York and the subs and all the financial  
10 payments, shortfalls and everything else, she  
11 collated that into the overall survey and mailed us  
12 a report that was provided to the Nusseibehs.

13 Q You referred to Francisco Rivera as a  
14 highly experienced project manager and project  
15 architect. What exactly was -- I know you said he  
16 worked in Chicago, what exactly was his experience  
17 as a project manager and project architect?

18 A He had extensive experience on  
19 large-scale projects, knowing how it comes together,  
20 knowing how to read drawings, knowing how to relate  
21 to subcontractors, knowing how to look at schedules,  
22 review completion percentages and everything that  
23 goes into the attendance of overseeing construction  
24 phase work.

25 Q Did he have experience with

1 B. Lapatner

2 residential projects prior to this?

3 A I know many commercial projects that  
4 he was involved in. Today I know he has a lot of  
5 experience on residential. I don't recall what  
6 specifically it was before he joined us.

7 Q What experience did LePatner Project  
8 Solutions have in residential projects? You do a  
9 lot of residential projects is the question?

10 A We get asked to look at a lot of town  
11 houses, a lot of build outs, a lot of high- end  
12 expensive apartments, sometimes on multi- floors.  
13 We get involved in hotel projects, so we understand  
14 everything that goes into a project that is either  
15 residential or relating to people living there,  
16 hospitality and the like.

17 Q Had you done any work in Connecticut  
18 prior to the Nusseibeh project?

19 A Probably. I am trying to remember  
20 specifically over the years. At this second, I  
21 can't recall other projects.

22 Q Did you have any prior experience in  
23 residential projects in Greenwich prior to the  
24 Nusseibeh project?

25 A I am sure I was called in to look at

1 B. Lapatner  
2 numbers of projects for either clients or friends  
3 who asked me to come and see the quality of work or  
4 look at whether their contractors were doing the  
5 work. It's just the nature of the business. I do  
6 that all over.

7 Q But had LePatner Project Solutions  
8 ever served in a construction management or  
9 construction oversight scope of work in a  
10 residential project in Greenwich prior to the  
11 Nusseibeh project?

12 A Well, a few miles down the road, I  
13 think it's over the border, but we were involved in  
14 120 million dollar entire expansion of the Osborn  
15 retirement community, which was very high end,  
16 residential, skilled nursing and assisted living  
17 facilities for almost a decade.

18 Q Any single family residences though?

19 A As I said, out of that there might  
20 have been many times board members asked me to look  
21 at these houses, after a while.

22 Q Separate and apart from you being  
23 asked to look at things because of your experience,  
24 I am just asking, you would agree with me that at  
25 least the phase 2 scope of work here in Exhibit 1,

1 B. Lapatner  
2 generally involves a construction management type of  
3 work in overseeing the completion of a project;  
4 correct?

5 A Yes.

6 Q Had LePatner Project Solutions done  
7 that for a single-family residence of whatever size,  
8 prior to the Nusseibeh project?

9 A Not in Connecticut that I can recall  
10 as I sit here now. Other places, yes.

11 Q Had you done work, any oversight work  
12 on any residence you owned?

13 A That I owned?

14 Q Yes, or lived in?

15 A Is that like am I a fool for a  
16 client?

17 Q I am just asking if you were  
18 involved, if you have done any renovation work on  
19 your own home, where you have overseen the project?

20 A Yes.

21 (Discussion held off the record.)

22 MR. HARRINGTON: Back on the record.

23 BY MR. HARRINGTON:

24 Q Once again, on page 4, it skips back  
25 to phase 1, 2 and 3, dealing with fees, but it says:



1 B. Lapatner

2 "Francisco Rivera will commence immediately, perform  
3 a room-by-room, area-by- area survey of the work  
4 performed."

5 Did he actually do that?

6 A I believe we did, in order to get a  
7 trade-by-trade understanding of where each room was,  
8 in terms of percentage of completion and quality.

9 Q Did that occur early on in the  
10 project?

11 A I think it occurred early on.

12 Q Did you participate in that?

13 A The actual percentages, no. He was  
14 there three days a week, so that was one of his  
15 early jobs.

16 Q Did you participate in any -- have  
17 you seen any written document with a room-by- room,  
18 area-by-area survey for that project?

19 A I believe there was one for each of  
20 the trades, because we had to move from room to room  
21 with the trades sequentially. In other words, what  
22 we were doing was getting out of certain parts of  
23 the houses, getting into other parts, and we needed  
24 to move the trades sequentially so that the work  
25 could be completed on a room-by-room basis.

1 B. Lapatner

2 Before that, it was helter skelter  
3 and it required, like I said, the lack of  
4 coordination required people to go back and do  
5 rework. We were desperately trying not to let that  
6 happen again.

7 Q There were two documents that I asked  
8 Francisco about at his deposition. It wasn't  
9 entirely clear how you created them and exactly what  
10 they were, but let me see if you know or don't know  
11 what they are. I am showing you what we previously  
12 marked as Exhibit 20.

13 The question was: Have you seen that  
14 before and do you know what that is?

15 A Oh, yes. This is either the or a  
16 portion of the room-by-room survey that was done in  
17 the initial walkthrough. November 27 we could have  
18 only been on the job for weeks, two weeks, maybe,  
19 but what is identified today on the different scopes  
20 of work in each area for that particular room.

21 Q The last two pages of that appear to  
22 be, I don't know if they were part of this  
23 particular document, the last two pages. They look  
24 to be part of a report. I don't know. If it's just  
25 that they were produced together. I don't know if

1 B. Lapatner

2 they were meant to be part of the same document. Do  
3 you know?

4 A This looks like it would have been  
5 part of a draft of the first progress report, which  
6 is designated "Progress Report Number 1," I am sure  
7 it's in the files you have seen. It looks like it  
8 may have been the draft that became part of it  
9 because we systematically said: Let's give them a  
10 detailed report that is the project report as  
11 opposed to other things that we promised.

12 Q That wasn't a trick question. I was  
13 just trying to figure it out.

14 A It looks like work in process for  
15 that large a report.

16 Q So it probably, it may be, it may not  
17 be part of the prior --

18 A Some of these questions are the  
19 questions we would have tried to answer to get into  
20 the report. It says: "We are trying to determine  
21 how subcontractors are seeking payment from York  
22 after so much has been paid out." So it's that kind  
23 of questioning we were constantly throwing around,  
24 to get our arms around the different disciplinary  
25 areas that we had to get under control if there was

1 B. Lapatner

2 going to be a game plan to complete the project.

3 Q So I'm just wondering, this appears  
4 to be, at the top of Exhibit 20 it talks about a  
5 walkthrough that apparently occurred on November  
6 27th?

7 A Yes.

8 Q Barry, that is you; correct?

9 A Yes.

10 Q Mark, do we know who Mark is?

11 A Along with John Santoro there was  
12 another young guy, could that have been Mark? I  
13 will see his name somewhere else. He was kind of  
14 like a beach boy. He would be on the job doing work  
15 that Jamal wanted him to do, cabinetry work or  
16 something, disappear for a month or two, then he  
17 would come back, "I am ready to work," and he would  
18 stay for two or three weeks and disappear. I am  
19 wondering whether he would have come by and looked  
20 at, to give us a rounding out of what he was doing.

21 Eventually we said, "You have to fire  
22 him." Because he was telling us, "Give him a scope  
23 of work to do," and he never shows up and this was  
24 crazy. So it was another one of Jamal's obstacles  
25 that he threw in front of us. I am not a hundred

1 B. Lapatner

2 percent sure of what his name was.

3 Q Is this possibly Mark Fredricks with  
4 York?

5 A No. I doubt we would have done that.

6 Q You would not have toured with York.

7 A I doubt it.

8 Q You don't recall touring with York?

9 A I don't recall doing this with David  
10 Peer, Jesus, putting him together with York would  
11 have been a fight because they did not get along, we  
12 were told.

13 Q Do you recall walking around with  
14 Julia, Jamal, and David Peer and John Santoro at the  
15 beginning of the project?

16 A Yes, I am sure we needed and wanted  
17 everybody's input as to what they could tell us.  
18 This is mostly them telling us stuff, not what we  
19 have identified for ourselves, because there are  
20 areas here that I can see that we were told this is  
21 the status of this, that subsequent reports show no  
22 way was that the truth.

23 Q For instance, staying on that first  
24 page, it says, there is one thing that says the  
25 "water treatment system finished today, 11/27/13."

1 B. Lapatner

2 Do you know who put that -- my question is: Was the  
3 list created and that was put in later or do you  
4 have any idea how this was put in there with  
5 something being finished?

6 A This was what we orally reported. We  
7 walked through and they said, "Oh, that's just been  
8 finished." We are trying to get a baseline.

9 Q Got it.

10 There is one other document which  
11 stated that the day before -- I am just not sure. I  
12 am going to ask you if you know what it is, Exhibit  
13 21? This appears to be broken down by contractor.

14 The question I have is: Did your  
15 office prepare this?

16 A What I am not sure of is whether this  
17 is something we were handed from York because we  
18 were doing a lot of back and forth with York in a  
19 kind of cooperative way. Look, we just want to get  
20 your books and records straightened out, so can you  
21 give us some more backup on that? They were feeding  
22 us documents for weeks and weeks that was eventually  
23 very helpful in reconciling their numbers, but this  
24 could just as easily have come from them. It  
25 doesn't look like the way we would do this, so I am

1 B. Lapatner

2 hesitant --

3 Q You are not sure who prepared it?

4 A I am trying to see something that  
5 would indicate. Here it's dated November 26th. It  
6 says, "Upgrade the HVAC systems and boilers to high  
7 efficiency," and it says, "Replace the two existing  
8 oil -- and it says in red, "Done." We would not  
9 have been in a position yet to know that. Someone  
10 would have to report that to us. There is too much  
11 here that required a detailed understanding and we  
12 were not yet up to speed on that.

13 Q On page 5 of Exhibit 1, at the top,  
14 it says there would be weekly meetings with you, the  
15 Nusseibehs and the subcontractors at the site,  
16 attended by both Francisco and you. Did you in fact  
17 attend weekly meetings on site?

18 A My records show that I was there very  
19 regularly, unless I was out of town for some reason.

20 Q What happened at the weekly meetings?

21 A Several things. Francisco and I  
22 would be there very early, sometimes 7:30 in the  
23 morning, because we wanted to meet the trades as  
24 they were starting and: What are you working on  
25 today? I want to verify, how much will you get

1 B. Lapatner

2 done? Where will you be at the end of this week?

3 We wanted to ask those questions for scheduling  
4 purposes.

5 A lot of times they would report that  
6 they were encountering new problems because of poor  
7 coordination or they were obstructed or somebody was  
8 preventing them from getting there or David Peer had  
9 just knocked down three walls and prevented them  
10 from doing the scope of work.

11 So we would always get there very  
12 early. Depending on the family's schedule, Jamal  
13 and Julia or just Jamal would be there, because  
14 sometimes the children and school or whatever took  
15 Julia out of the opportunity to meet at times. But  
16 Jamal would come by and we would then walk the  
17 project with him, talking about progress or talking  
18 about problems or discussing issues that we wanted  
19 to bring to his attention, and there was always a  
20 list.

21 So that was the regular meetings that  
22 took place during those walkthroughs and the  
23 meetings with the clients.

24 Q Were subcontractors at these  
25 meetings, too?



1 B. Lapatner

2 A No. We would talk independently of  
3 the subs.

4 Q So it was not -- I am sure you are  
5 familiar, a lot times you would have projects with  
6 meeting minutes, where all the subcontractors attend  
7 and you get bullet items and every week or every  
8 other meeting you see where you are on those bullet  
9 items. Did you do that?

10 A We do that on all our projects, we  
11 never have the clients there, most of the time,  
12 because if you have to take a subcontractor's head  
13 off, you don't want to do it in front of a client.  
14 If you have to say, "Guys, you have four workers  
15 showed up instead of eight, I am going give you five  
16 days to start getting the eight guys on or I am  
17 going to recommend you be terminated." You have  
18 those discussions with trades, often without the  
19 clients being there. Some clients were at the  
20 regular project meetings, but that kind of meeting  
21 would always be before, so that you can talk to  
22 people privately and not embarrass them in front of  
23 their clients. That's part of keeping good  
24 relations with trades. You have to respect them.

25 Q Did you prepare any written minutes

1 B. Lapatner

2 for any of these meetings?

3 A I didn't.

4 Q Do you know if any were prepared?

5 A I know many times when Francisco from  
6 those meetings was following up in direct dealings.

7 MR. HARRINGTON: Mark these two as  
8 exhibits as 26 and 27?

9 (Project Meeting Minutes 1/06/14, was  
10 marked as Exhibit No. 26 for identification,  
11 as of this date.)

12 (Project Meeting Minutes 1/14/14, was  
13 marked as Exhibit No. 27 for identification,  
14 as of this date.)

15 Q I am handing you Exhibit 26 which,  
16 for the record, says "Project Meeting Minutes,  
17 January 6, 2014," and Exhibit 27 at the top says,  
18 "Project Meeting Minutes, January 14, 2014."

19 Do you recall seeing these while you  
20 were working on the Nusseibeh project?

21 A No.

22 Q Does LePatner Project Solutions, do  
23 you utilize similar meeting minutes in other  
24 projects?

25 A There are usually -- the minutes are

1 B. Lapatner

2 usually prepared not by us. In other words, on all  
3 contracts where we are the project managers, the  
4 meeting minutes are either produced by the project  
5 architect or the project executive or project  
6 manager for the CM because from that flows their  
7 directions to all of their trades.

8 Q You don't know who prepared the 26th  
9 or 27th?

10 A This does not look like something  
11 that my office prepared.

12 Q You indicated you have not seen these  
13 before, so you wouldn't know if there were other  
14 meeting minutes after this date?

15 A Correct.

16 Q For the record, these are the only  
17 two that I found in the documents you produced, but  
18 you're not sure who created them?

19 A I am not sure they are in our files,  
20 but if they were in our files, it does not appear to  
21 be something that we generated because you would see  
22 what we generate says "Prepared by LePatner Project  
23 Solutions."

24 Q Your name would be on it somewhere?

25 A Yes.

1 B. Lapatner

2 Q Do you know if the Nusseibehs  
3 prepared any meeting minutes?

4 A No. They were prolific e-mailers.  
5 E-mails would come out of them: I just looked at  
6 this requisition and so on. I can't understand, how  
7 could we ever justify payment to this particular  
8 trade or that. I walked through and I saw this  
9 wasn't done. I mean, they would do their own  
10 walkthroughs and flurries of e-mails would just come  
11 down with their observations.

12 Q Not a document like 26 or 27?

13 A No. They were not people that  
14 stopped to do something like this. It would be  
15 someone on the job.

16 Q Did you ever have an issue with the  
17 Nusseibehs paying any of your bills?

18 A Only at the very end.

19 Q But then they ultimately paid  
20 everything?

21 A Yes. We reached agreement and there  
22 was no problem.

23 Q And there is one question that I have  
24 about Exhibit 1 -- well, don't hold me to that, it  
25 could be more than one, but on page 6, third

1 B. Lapatner

2 paragraph, you specifically spell out that  
3 agreement, Exhibit 1, pertains solely to project  
4 management services; that did not include the  
5 performance of legal services; correct?

6 A Correct.

7 Q And it says, "In the event that any  
8 legal services are requested, they shall be  
9 performed under separate agreement by LePatner &  
10 Associates, LLP"?

11 A That's correct.

12 Q And I think I asked you earlier, you  
13 were not sure if there was a separate engagement  
14 letter for any legal work?

15 A I don't recall one.

16 Q Do you recall doing any legal work  
17 for Nusseibeh?

18 MR. CAPPELLO: Objection to form.

19 Q Which you would consider legal  
20 services?

21 A Did I look over the contract and see  
22 if they had an arbitration clause or mediation for  
23 York, is that giving legal advice? I would not call  
24 it -- I would call that business advisory advice,  
25 because when the issues piled up insofar as the

1 B. Lapatner  
2 allegations against York, I became very, I will use  
3 the word adamant in my discussions with Julia and  
4 Jamal: Get someone on board to start a lawsuit  
5 against them. It doesn't matter whether you have  
6 every dollar of damage because we are going to  
7 uncover more stuff down the road. It doesn't  
8 matter. Put them on notice.

9 You've got them individually because  
10 these guys literally were frauds and, as I  
11 mentioned, I gave them the name of Wiggin & Dana,  
12 because I remembered they had a Stamford office,  
13 which is not far away from Greenwich, so that was  
14 convenient, and I never learned that they followed  
15 up or did anything. I don't know if the Statute of  
16 Limitations is now expired, but they certainly  
17 missed the opportunity to go after those people,  
18 which clearly stole their money.

19 Q And you indicated that you had put  
20 them in touch with Wiggin & Dana. Was there any  
21 time you contemplated that LePatner & Associates  
22 would be involved in representing them in litigation  
23 against York?

24 A The only thing we could do is be a  
25 fact witness, a preparer of the documents, a guider

1 B. Lapatner  
2 of their counsel, because if I ever did bring a  
3 lawsuit, let's say I was admitted in Connecticut, I  
4 would be disqualified because I was going to be a  
5 fact witness. That conflict of interest comes up a  
6 lot of times. In fact, there's a project right now  
7 where I have handled as the project manager and the  
8 construction counsel and the general counsel for a  
9 client. We have fabulous quality firms that we will  
10 call upon who are excellent at construction law,  
11 some of whom were younger former partners of mine  
12 and we retain them on behalf of the client because  
13 we would be disqualified.

14 Q Did you have that conversation with  
15 Jamal an Julia?

16 A I said: We have to get a Connecticut  
17 counsel. We have all the information. We would be  
18 able to feed them, save them a lot of time and money  
19 feeding them all of the stuff that we have digested,  
20 because drafting that complaint is not going to be a  
21 difficult one: Breach of contract, negligence  
22 breach of fiduciary duty, fraud, misrepresentation.  
23 Anybody can draft that stuff, there is no magic to  
24 that, but we have all of the stuff to back it up.

25 Q And do you recall if LePatner &

1 B. Lapatner

2 Associates billed the Nusseibehs for any work that  
3 it designated as litigation or legal work?

4 A Well, they may have some billings  
5 from LePatner & Associates because of the  
6 distinction between this advisory work on the  
7 termination and so on, which is not project-  
8 management work.

9 The project-management work was what  
10 we did on site, okay? So we may have separately  
11 billed in order to make it easier for Jamal and  
12 Julia to look at our bills and distinguish that we  
13 are not sticking things underneath, because we gave  
14 them specific scopes of work with specific fees  
15 here, and what was ancillary to that we wouldn't  
16 have wanted to mix up and say that's coming under  
17 this scope of work.

18 So there may have been invoices  
19 issued under LePatner & Associates, but I'm sure  
20 that would have detailed the other advisory work.

21 Q For the LePatner Project Solutions'  
22 work, did those bills actually go out under a  
23 LePatner Associates' billing format?

24 A I was not involved in that.

25 Q So you were not involved in the



1 B. Lapatner

2 billing?

3 A I have enough on my plate, invoicing  
4 and so on.

5 Q Let me ask you a little bit about  
6 that. When you when say Francisco was doing work on  
7 the project, does he submit time sheets?

8 A Yes. I am sure they're all digitized  
9 and they're all reflective. We give individual time  
10 records. Everybody puts in individual time records,  
11 like all professionals do, by project, where were  
12 you, what you were doing and so on, and the dates.

13 Q My question is: Are there records  
14 that show that work was done that didn't ultimately  
15 end up on a bill or is the intention that every hour  
16 that you are doing work was going to end up on the  
17 bill?

18 A I can't answer that question, it's  
19 hypothetical.

20 Q On this job?

21 A But there was Francisco three days a  
22 week on this job, eight hours a day, six hours a  
23 day, four hours a day. I am sure that was recorded  
24 by him. Did he take a trip to Las Vegas and put it  
25 on the bill? I don't think so. He is as honest and

1 B. Lapatner

2 scrupulous as you're going to get.

3 MR. HARRINGTON: Please mark Exhibit

4 28.

5 (Multiple bills stapled together was  
6 marked as Exhibit No. 28 for identification,  
7 as of this date.)

8 Q I am showing you what we have marked  
9 as Exhibit 28, which I will represent for the record  
10 are multiple bills stapled together. It's not just  
11 one bill.

12 A I was going to say it looks like it's  
13 from a major corporate law firm who's giving a bill  
14 for two weeks of 35 associates working, so I am glad  
15 you said it's from multiple days.

16 Q It's multiple bills with multiple  
17 components. I can't say it's all the bills that  
18 were issued, but I believe they are the majority of  
19 the bills that were issued.

20 My question is: Do you know, in  
21 light of your prior testimony that you didn't really  
22 get involved in the billing, whether or not these  
23 are all of the bills that were issued?

24 A I would never know. I would have to  
25 ask my office to do a reconciliation.

1 B. Lapatner

2 Q If you could, it's sort of in the  
3 middle of the package, I didn't count the pages in,  
4 but at the top it's an invoice dated February 28,  
5 2014. It's invoice number 37918.

6 A December 24th?

7 Q February 28, 2014?

8 A I have one here. Yes. I have it.

9 Q This purports that -- there's a  
10 reference to litigation up top?

11 A Yes.

12 Q My question is: Is this an invoice  
13 that was for legal work as opposed to project-  
14 management work?

15 A No. This all refers to the claim to  
16 be presented against York, and what is clear is I  
17 asked one of my associates, Jeff Kleiner, JWK, to  
18 look into it so we can talk to Jamal and Julia about  
19 whether there would be jurisdiction in Connecticut,  
20 whether there were any issues of mediation or  
21 arbitration that would precede it, because there  
22 would be no sense sending this to a Connecticut  
23 litigation firm if there was a requirement that they  
24 had to engage in mediation first before starting  
25 litigation.

1 B. Lapatner

2 It says, on February 25, BBL, me:  
3 "Conference with clients to review claims against  
4 York. Conference with clients to review  
5 recommendations to make demands on York, its  
6 principals and dispute of issues in arbitration.  
7 Review title search."

8 We were worried that they were  
9 judgment proof, so we did a title search to see  
10 because we had heard they did projects and were  
11 working on projects in Westchester. So if we found  
12 that they had current contracts, then we could  
13 garnish or go after or tie up those projects if  
14 those were the only resources against them. All of  
15 this was in furtherance of discussing with them what  
16 their rights were.

17 Q Okay, but my question was: When you  
18 have a reference on the bill to litigation, this is  
19 separate and apart from phases 1, 2, and 3 that are  
20 referenced in the agreement?

21 A Exactly. It's formation, telling the  
22 clients what we have gathered in terms of  
23 recommendations, how they should proceed against  
24 York, because Jamal said, "How shall I go about  
25 doing this?"

1 B. Lapatner

2 We said, "We will give you some  
3 recommendations."

4 Q And you gave some recommendations and  
5 then you also said you referred them to Wiggin &  
6 Dana?

7 A That's correct.

8 Q Do you remember the attorney at  
9 Wiggin & Dana that you referred them to?

10 A No, but I remember that I called Mark  
11 K. Kaduboski, K A D U B O S K I, who is a partner in  
12 the firm.

13 Q Did you know him from somewhere else?

14 A Yes. Either, I believe, for a client  
15 of mine or he may have done corporate work -- I knew  
16 the firm had done.

17 Q At some point in time, after Exhibit  
18 1 was executed, LePatner Project Solutions began to  
19 work on the project; correct?

20 A Yes.

21 Q Do you recall if you were involved in  
22 the communications that actually terminated work?

23 A I believe my office drafted a  
24 proposed termination letter. I do not know what  
25 happened to it.

1 B. Lapatner

2 Q You don't recall if it was sent?

3 A I believe at some point York was  
4 terminated by Jamal. It was very important to  
5 formally end that contract. The reason was to make  
6 sure that they were not going to get paid any more  
7 money from Jamal.

8 MR. HARRINGTON: Mark Exhibit 29,  
9 please.

10 (Termination notice to York was  
11 marked as Exhibit No. 29 for identification,  
12 as of this date.)

13 Q I'm showing you what we have marked  
14 as Exhibit 29. It appears your office drafted a  
15 termination notice to York; is that correct?

16 A This is drafted by my office, yes.

17 Q Do you know if this was -- if you  
18 look at the second page, the actual draft notice, it  
19 says, "via hand delivery," correct?

20 A Yes.

21 Q Do you recall if an actual final of  
22 this was hand delivered to York on the site?

23 A What I was trying to recall as you  
24 mentioned, hand delivery, was Francisco, who I said  
25 lived in New Haven, would have dropped it off on the

1 B. Lapatner

2 way to the site, but I don't recall.

3 Q Do you believe that at some point in  
4 time the termination notice, either the same as  
5 Exhibit 29 or a similar form that is Exhibit 29, was  
6 given to York?

7 A I believe they received notice the  
8 formal termination.

9 Q But was it on a document that was on  
10 LePatner Project Solutions letterhead, like this  
11 one?

12 A I can't recall what they received.

13 Q Did you have any conversations with  
14 them after that was sent?

15 A Well --

16 Q "They," meaning York?

17 A I can't recall, but I do remember  
18 conversations, very nice ones, with Mr. Barile, B A  
19 R I L E. I think that's his name, one of the two  
20 principals of York, about the fact that we needed  
21 them to turn over all of this requested information  
22 if there was ever going to be a reconciliation and  
23 any final payment by Jamal and Julia to them. In  
24 fact, I think this letter refers to the fact that,  
25 quote, "You are requested to please prepare a final

1 B. Lapatner

2 requisition for payment through November 26th, 2013.

3 At the time of payment of the final requisition by  
4 the owner, York shall execute a final release and  
5 lien waiver form."

6 It was trying to be business like  
7 and, hopefully, securing the last of the project  
8 documentation and payment documentation that we  
9 could get from them because some of the subs were  
10 giving us different numbers.

11 Q Did they ever give you a final  
12 requisition for payment?

13 A I don't recall.

14 Q Did they actually submit requisitions  
15 for payment on this project or did they submit  
16 something other than that?

17 A There were pieces of paper, I would  
18 call it.

19 Q Not a formal AIA requisition?

20 A Nothing that they did was in  
21 accordance with standard expectations of the  
22 industry.

23 Q So you made the assessment early on  
24 that York should be terminated, even before this  
25 termination notice was sent; correct?



1 B. Lapatner

2 A After we had assessed the baseline of  
3 their departures from the standard practice and  
4 their inability to account for the work; their  
5 inability to coordinate the trades, which was very  
6 obvious; their inability to get the work permits and  
7 to do the established things that should have been  
8 done before the work started, it was not a far  
9 difficult decision to make that recommendation to  
10 Julia and Jamal.

11 Q Did you believe that any of the work  
12 that was performed by subcontractors under York was  
13 performed adequately?

14 A I am smiling because in my business,  
15 the answer to that question would be how long is a  
16 piece of string, which is an old British adage?  
17 Determining how much of an individual trade's work  
18 was adequate, was a function of what happened in the  
19 weeks and months ahead that undid much of what would  
20 ordinarily have been accepted, as you saw in one of  
21 those preliminary walkthroughs, where it says "done,  
22 done, done." If we now walked ahead six weeks,  
23 eight weeks, nine weeks, ten weeks, much of that  
24 would have been undone, undone, undone, and ripped  
25 out and redone again.

1 B. Lapatner

2 So it did not -- it turned out that  
3 any initial assessment of what was acceptable was a  
4 function of events that superseded that approval.  
5 That approval would have been temporary and  
6 superseded by other decisions as we uncovered  
7 things.

8 Q Did you ever tell the Nusseibehs that  
9 at least some of the work, you thought some of the  
10 work was sufficiently performed?

11 A Yes, because we had to make some  
12 payments to these trades for work that was properly  
13 done, that could not be questioned at the time. I  
14 might just mention it was always a recommendation,  
15 because Julia and Jamal were the final decision  
16 makers because they were walking around and deciding  
17 what to send on to the accountants for payment.

18 Q Were you involved in the payment  
19 approval process personally?

20 MR. CAPPELLO: Objection to form.

21 MR. HARRINGTON: I will rephrase the  
22 question.

23 Q Were you involved in the process of  
24 approving payment for contractors who were working  
25 after LePatner Project Solutions came on the job?

1 B. Lapatner

2 A I personally did not put the  
3 percentage on it, that was Francisco who was there  
4 and could determine whether it was 28 percent or 35  
5 percent, the scope; but our office was always  
6 recommending agents or saying, yes, I believe we  
7 could recommend that you could pay so and so that  
8 amount. It didn't necessary mean that Jamal and  
9 Julia paid that amount. If they felt, felt in their  
10 own opinion, somebody had done what should have been  
11 done that month.

12 Q What is your personal -- you  
13 personally, Barry LePatner, what was your personal  
14 involvement in the process whereby a sub would  
15 submit an invoice and that invoice would move up the  
16 chain, once you guys were on the project?

17 A What I would learn when I came there  
18 each week and then had meetings in the office, was  
19 about issues that had to go to Jamal and Julia, I  
20 would present them. So if we had trades who said:  
21 You wanted me this month to do the electrical work  
22 in and around these walls in the basement, I would  
23 hear Francisco say, "You are not going to believe  
24 this, but David Peer told another trade to knock  
25 those walls down because he had another idea that he

1 B. Lapatner

2 wanted to introduce to put in. So they would undue  
3 all the work that had been done.

4 I would learn about that. We would  
5 then talk about what does that mean to the approvals  
6 for work? When are we going to have a new scope?  
7 How are we going to figure a new scope because we  
8 don't have a set of drawings from David as to what  
9 he was doing and what he was contemplating, unless  
10 he finally drew something on a wall for the trades.

11 These are the kind of issues that  
12 would come to me, not whether the painter had nicely  
13 done this wall but still had to do touch- up work so  
14 we would only recommend X percent of that room and  
15 not Y percent. That was not what I there for, but  
16 the issues had impacted the schedule, impacted  
17 budget, impacted we are going to have to rip out all  
18 of your HVAC systems because what they previously  
19 did has impacted the life span of your boiler.

20 You had a boiler. What they did was  
21 by running the gas into the wrong pipes and running  
22 it, the engineers told us maybe they got another two  
23 or three years of that thing, but it's dangerous now  
24 because what they had connected up affected the life  
25 cycle and the way of a normal functioning system.

1 B. Lapatner

2 That lead to a whole recommendation from the  
3 engineers; new exhaust piping and new ducts and so  
4 on, which we were actively involved in trying to  
5 negotiate a price at the time we left the project.

6 Q But in terms of the approval of  
7 invoices when and as they were submitted, was the  
8 process that they would go to Francisco who would  
9 then pass them on to the Nusseibeh? What was the  
10 process?

11 A I am trying to remember whether John  
12 Santoro was also involved with some of the trades  
13 and approving those things, but I know we gathered  
14 them up and there was correspondence, e-mails or  
15 whatever to Jamal and Julia, recommending payments  
16 for these trades where we did not have issues.  
17 Where we felt comfortable we would say: We would  
18 recommend that you pay them this amount.

19 They weren't always followed by Jamal  
20 and Julia and the trades would come to us and say:  
21 They only paid us less, and we would say: We'll  
22 talk about that in the next week or the next  
23 submission.

24 Q Do you recall any specific instances  
25 where you made a recommendation of payment and Jamal

1 B. Lapatner

2 and Julia didn't make the payment?

3 A No. It was more than once or twice,  
4 and we understand, that's the owner. The owner  
5 makes the final decisions. All we had was a role to  
6 kind of take this spool of wool that was all over  
7 the place and migrated into the outside where the  
8 pipes that were left exposed to the carriage house  
9 with the illegal bathroom up on top, and just try to  
10 pull this together for him, so he could get into the  
11 house. And I remember we were maybe a week or 10  
12 days away when we just terminated.

13 Q You had mentioned earlier Dan Rosen,  
14 the accountant; was he involved in the payment  
15 process?

16 A I believe he had control over the  
17 checkbook. I believe he wrote the checks for them  
18 or directed a bank to write the checks, I don't  
19 know. But he was the accountant.

20 Q Did Francisco communicate directly  
21 with them?

22 A Yes. There was a major issue about  
23 York having purchased hardware from a local  
24 Greenwich, an Old Greenwich hardware store, a  
25 supplier, I forget their name, but it caused a major

1 B. Lapatner  
2 problem because we left them to account. The  
3 numbers kept changing and we had trouble  
4 recommending to Jamal and Julia and Dan -- and these  
5 people were hounding Jamal and Julia. They would  
6 say, "I got another name, e-mail from the hardware  
7 store, take care of this."

8 We don't know how because the number  
9 keeps changing. They keep finding other invoices  
10 that they say they delivered to York, on site where  
11 nobody knows where they are. We are trying to  
12 reconcile that with York and I remember being in the  
13 middle, just tell me a number, please.

14 Q You don't remember the name of that  
15 store?

16 A It's in the records. There's so many  
17 e-mails, it became humorous: "Let's just tell them  
18 some number, pay them." They didn't want to pay  
19 them unless they paid them in full, and got a  
20 release and we had trouble getting that final number  
21 because between York, the hardware store and people  
22 on the job, the trades, they couldn't reconcile or  
23 recommend that that was stuff for their job. So  
24 they were wondering, and we had to start an inquiry  
25 whether York had ordered it in the name of Jamal or

1 B. Lapatner

2 Julia for this project but were using that for  
3 another project.

4 Q Do you recall if it was a Claafs, C L  
5 A F S?

6 A Yes, two, A's or two F's or either  
7 one. Yes, and it was an unholy mess.

8 Q Do you know if they ever got paid?

9 A I think I had instigated it to myself  
10 and said, "Look, this is the best we could do." I  
11 dealt with Dan Rosen and I just said, "Just pay  
12 them." I am trying to remember whether we got them  
13 to sign a lien waiver on the lease, so we got Jamal  
14 and Julia off the hook on a potential lien.

15 Q Let me show you what we have marked  
16 as Exhibit 4 at Francisco's deposition. Do you  
17 recall sending this letter, e-mail I should say?

18 A No.

19 Q Do you recall the e-mail at all?

20 A I recall the substance of these  
21 issues being vigorously discussed.

22 Q So the beginning of the second  
23 paragraph, it says, the first sentence: "Based upon  
24 our review of the work in place, it appears that  
25 most of the work has been capably performed,



1 B. Lapatner

2 although highly dissatisfied with York's lack of  
3 experience oversight," et cetera.

4 So, is it your opinion as of December  
5 1st, 2013 that most of the work had been capably  
6 performed?

7 A When I walked past the boiler and  
8 people say, "Yes, we just finished installing it,"  
9 and it says boiler installation done on November  
10 26th or whatever, at that time I haven't gotten into  
11 looking closely at it, inside of a week-and-a-half  
12 or less than a week and that statement is valid,  
13 only to await subsequent investigation of the myriad  
14 things that we did uncover.

15 Q When you were referring to the work  
16 that you thought had been capably performed, you  
17 mentioned the boiler; were you talking about  
18 finished work or you don't know what you are talking  
19 about? I don't mean to say you don't know what you  
20 are talking about -- you don't know what you are  
21 referring to?

22 A Here is what this document says:  
23 There are things that had gotten done over six  
24 months, a year, however long York had been on it,  
25 but there are major issues to be investigated and

1 B. Lapatner

2 when you read this, you see that York has not been  
3 paying subs.

4 You see there is no planning and  
5 oversight by York, which is why you haven't had them  
6 be finished. You see walls currently being torn  
7 down, then being built, then being rebuilt and  
8 there's no plans or specs to tell who is doing what.  
9 You have trenches being dug outside, covered over,  
10 uncovered; electricians are supposed to be there,  
11 they're not showing up. You don't even have the  
12 right permits and you have partial payments for work  
13 performed and long delays because some of the subs  
14 are going, "When am I getting paid?" Okay.

15 So we then say, in this one week that  
16 we have been on the job or ten days, whenever it  
17 was, John Santoro, who was the superintendent who  
18 was working -- I am not sure, but let's assume for  
19 York for the moment, who was kept on the job by  
20 Jamal, okay? Based on John's experience on the  
21 project paying subs directly on your behalf, which I  
22 think is what continued even after we were gone, not  
23 on the project, he said, I wrote, "We have to still  
24 analyze York's records for verification of all these  
25 numbers and pieces of paper."

1 B. Lapatner

2 We told the subs: Get us everything  
3 you know so we can start a full reconciliation and  
4 now we are saying: Here is what people are saying  
5 they are owed, and there's the name of that guy, the  
6 mover, John Carney.

7 So how many subcontractors on your  
8 job are saying they are owed \$190,000 for work they  
9 say they performed under York but never were paid,  
10 and here is a group of subcontractors who have not  
11 submitted anything to us yet. We don't know  
12 anything about it. We estimated an additional 25 to  
13 \$100,000 in shortfalls when payments they're asking  
14 for, Peers quickly has or hasn't paid them. Then  
15 you have these other suppliers who have sent in  
16 bills helter skelter, we don't know how much they  
17 are owed, but let me tell you what we have uncovered  
18 very quickly about York.

19 We have already found they are  
20 involved in other litigation situations with owners.  
21 The trades have told us they are worried about  
22 getting paid by York because they know York is being  
23 sued on that job and that job, which means they have  
24 money that they took from you, Jamal, because you  
25 just handed it to them without any accounting and

1 B. Lapatner

2 there is little likelihood you are getting it back,  
3 because the work suffered and it's been done in an  
4 improper and inferior way, you got no value for it.

5 So, we are seeing and hearing about  
6 problems they have and we learn that they have some  
7 properties, including two properties that you should  
8 follow up to see whether we can use them as assets  
9 if you have a problem down the road of getting a  
10 reconciliation that makes sense with York. The subs  
11 even told us, York has a reputation for nonpayment.  
12 York has changed names several times. Good job,  
13 Jamal, on checking out who you hired.

14 All the trades mentioned that getting  
15 an electrician was extremely important to move  
16 things forward. John Santoro has a few candidates  
17 lined up, so apparently an electrician had already  
18 walked off the job and was not putting up with it  
19 anymore. So without the electrician, you can't  
20 close up walls and apply finishes, forget that we  
21 learned that the electrician did a shitty job. So  
22 we will try and help you get one.

23 And then we describe the problems  
24 they have with the City of Greenwich or the Town of  
25 Greenwich on permits. Then we talk about the

1 B. Lapatner

2 problem of David Peer, who apparently is assisting  
3 me with mill work and promised to send us drawings  
4 and information -- never did because he didn't do  
5 any. Then he has his assistant, Paula, the interior  
6 decorator, who created a whole other level of  
7 problems by ordering furniture before anything was  
8 done, and her status on the job is in question by  
9 other people.

10 The kitchen was 58 degrees on  
11 Saturday, even with the heat on. We have no idea  
12 what is going on with the mechanical plumbing and  
13 electrical crews, but we need an engineer there. If  
14 you don't get an engineer on board, you are never  
15 going to get these problems solved. All of the  
16 painting and finishing work would be affected  
17 without a properly balanced HVAC system as there are  
18 wild temperature and humidity swings. I couldn't be  
19 more deeply involved in trying to help these clients  
20 identify the slew of issues that were created by  
21 York, and more were to come, more to change the  
22 scopes of work, more were to follow from David Peer  
23 being destructive, more were to follow when we  
24 uncovered the slew of things that our report say,  
25 and these people are suing me. I can't wait until

1 B. Lapatner

2 you can identify what we did wrong because should  
3 that effort fail, it will be my turn.

4 MR. HARRINGTON: Can you go back and  
5 tell me what the question was here?

6 (Off the record.)

7 A If I failed to answer it exactly, if  
8 you repeat it, I will start all over again.

9 Q I think the question was trying to  
10 ask you what particular work you were referring to  
11 that at the time you thought had been capably  
12 performed, and you may not recall.

13 A I did that in the negative. I am  
14 trying to say we could recommend certain work at  
15 this point, only to undue that recommendation when  
16 information that was slowly evolving with every day  
17 and week undid the work that we thought was  
18 satisfactory. It was a moving chess board, if you  
19 want to put it in some analogy.

20 Q Would it be fair to say at this point  
21 in time that you didn't think that the HVAC work had  
22 been capably performed?

23 A I am not sure whether -- we knew we  
24 needed engineers in there because the heating system  
25 was turned up to normally heat this very large house

1 B. Lapatner

2 and it was cold as the dickens there, affecting the  
3 performance of the work because some of the workers  
4 were concerned -- let's say a painter: I don't want  
5 to put paint on if it's 55 degrees in here, because  
6 it does not attach itself as well as when we are in  
7 a temperate, meaning about 65 to 70 degree  
8 environment, and it was also affecting in-place  
9 work, finished work in some areas, because it's just  
10 bad practice to be doing some kinds of work when  
11 there are temperature fluctuations because it's  
12 going to affect the quality of the work.

13 Q You actually mention that later in  
14 the e-mail. You say, "We need some type of  
15 mechanical plumbing, electrical engineer that could  
16 do an analysis because the kitchen was 58 degrees?

17 A Did I know specifically what was  
18 wrong with the HVA system, no, but when we brought  
19 in people and we found out that the line was here  
20 and it should have been feeding into here and that  
21 it created a very dangerous situation, we moved very  
22 quickly to save that house from a very bad ending.

23 Q Did the engineer find that out or did  
24 some contractor find that out?

25 A I can't tell you at this point

1 B. Lapatner  
2 because one thing happened with the other thing  
3 happening right after it. So there may have been  
4 something that was raised as a question by the  
5 contractor relating to someone else's work that we  
6 immediately said: We have to get an engineer on  
7 board to just tell us, because we are not going to  
8 use our knowledge when an expert's knowledge is  
9 really required.

10 Q Just going back to the original scope  
11 of my question, you made a reference to most of the  
12 work had been capably performed and I was trying to  
13 find out if you remembered if you had a specific  
14 work that as of December 1st you thought had been  
15 capably performed. I know you gave a long answer  
16 and my question is: I don't think -- agree with me  
17 or disagree with me, it did not include the HVAC guy  
18 that you thought had been capably performed as of  
19 this date; was it?

20 A If it turned out there was no fuel in  
21 the fuel tank and that's why the heat was not coming  
22 up, it would have nothing to do with the quality of  
23 the work.

24 Q You didn't know at that time?

25 A We didn't know. We were exploring



1 B. Lapatner

2 not one, not six, but 56 different issues that were  
3 impacting the budget and the schedule.

4 Q You did reference here that the  
5 subcontractors who you spoke to told you getting an  
6 electrician involved was extremely important;  
7 correct?

8 A That's called lack of coordination.  
9 Everybody should have been stopped until that was  
10 done, because there was a lot of work that was  
11 proceeding and Jamal wanted that work going forward,  
12 that we said without the proper coordination,  
13 without a set of plans and specs, you are shooting  
14 from the hip and letting people go because we may  
15 run into situations and we are likely to, that we  
16 are going to have to rip out work because it's not  
17 properly phased and coordinated.

18 Q You mentioned here that John Santoro  
19 has a few candidates lined up. Was there a reason  
20 that John Santoro was lining up candidates?

21 A Yes, because he was a local guy and  
22 he said, "Oh, I have worked on various other  
23 projects with other electricians." We were already  
24 skeptical about accepting recommendations from him.  
25 York, he came with York apparently, and Jamal was

1 B. Lapatner

2 very happy to keep him on board and pay him to stay  
3 on the project.

4 We never saw his bills. We never saw  
5 what he did or the scope of what he was doing.

6 Jamal said, "I will take care of him," and we put  
7 that under the category of Jamal, John Santoro, this  
8 other mill worker guy, David Peer and Paula were all  
9 running around doing their own little work and we  
10 had to work in and around them because Jamal signed  
11 off on them.

12 Q You are saying you had no involvement  
13 with approving John Santoro's bills?

14 A I don't believe we saw John's, I  
15 don't believe. Could I be wrong?

16 Q Would Francisco have more knowledge  
17 of this than you would?

18 A Yes, he would, but I know we had  
19 issues with John Santoro.

20 Q You did not mention any problems with  
21 John Santoro in this particular e-mail?

22 A Not yet. After ten days, not yet.

23 Q Did you do anything personally about  
24 trying to locate and hire an electrician?

25 A No.

1 B. Lapatner

2 Q Would that have been Francisco's job?

3 A What would happen was, if John  
4 Santoro mentioned anyone, we would have looked at  
5 their credentials to see if they had capability. I  
6 don't remember what happened with the subsequent  
7 retention of an electrician.

8 Remember, at this time, I am having  
9 talks every week, in the first couple of weeks,  
10 suggesting they shut the job down, get an accounting  
11 of all of the York stuff and start over again with a  
12 set of architects and engineers so that they could  
13 have a proper functioning job and an opportunity to  
14 get a correct scope of work going forward.

15 Q Did you ever say that in writing,  
16 that you should shut the job down and hire  
17 architects to create a scope of work?

18 A I doubt it, unless it's in the first  
19 report. I doubt it, but I sure know I sat down with  
20 Julia and Jamal and said to them, let me explain to  
21 you the original sin on this project, how you  
22 retained a contractor to start doing work without a  
23 set of plans and specifications. This is not only  
24 highly irregular and highly unusual, I told them,  
25 but it's the cause of everything that flows from

1 B. Lapatner

2 hiring York and then deciding how to do these  
3 different scopes of work with a bunch of  
4 subcontractors that I don't think belong on the job  
5 to match the quality of this house.

6 Q Did you request any drawings or plans  
7 that York may have been working from?

8 A I asked them of York. We asked it of  
9 the trades, and we asked it of Jamal and Julia.

10 Q And did anybody have a drawing?

11 A I think, yes. The answer is yes.

12 Q What drawings did you have?

13 A I don't remember, but let's call them  
14 sketchy, not professionally done architect and  
15 engineering design documents, by any imagination.

16 Q Is it your understanding that stamped  
17 architectural drawings are required for residential  
18 renovation projects?

19 A There is certain work that you don't  
20 need signed and sealed drawings, but to get a permit  
21 from a local jurisdiction such as a Building  
22 Department or issues such as plumbing, electrical  
23 work, boiler work and sometimes, depending on the  
24 jurisdiction, work such as knocking down walls which  
25 are going to affect fire codes and the like, you

1 B. Lapatner

2 need to get approval because you're going to have  
3 inspections done based on: Does that work reflect  
4 what the town approved for you to do.

5 Q Within this letter, Exhibit 4, turn  
6 to page -- what's the last page?

7 A The third page, top of the third  
8 page?

9 Q Top of the third page. "We should,  
10 thus, place special importance on obtaining a report  
11 from the City of Greenwich, regarding general permit  
12 acquisition and conditions."

13 How quickly did someone from LePatner  
14 Project Solutions go down to the Town of Greenwich  
15 regarding permit acquisition and conditions?

16 A We already talked about that. I  
17 believe, preliminarily Francisco was down there to  
18 get the lay of the land; what was filed, what  
19 inspections had taken place for work in place  
20 already -- turned out not much -- and when we  
21 determined that there had been what I am calling  
22 here "piecemeal nature of the work and permit  
23 acquisitions to date," we felt if we tried to come  
24 in and under the radar do things, that it could have  
25 opened up a very serious can of worms for the

1 B. Lapatner

2 clients.

3 We had our own discussions and talked  
4 about it. We talked with the trades, what's the  
5 best way to do this in the Town of Greenwich. They  
6 felt that the best thing of course would have been  
7 if there was a set of drawings and plans, and then  
8 when that couldn't be produced because the clients  
9 didn't want to stop to do that, then we said we are  
10 going to try and get this work approved on a  
11 trade-by- trade basis.

12 The trades worked with us to try and  
13 put together some things that at least we could have  
14 inspections done at a subsequent date. I don't  
15 remember how specifically it was worked out with the  
16 town. Francisco would be the one who would remember  
17 the contacts and the communications, but there was a  
18 process that we set in motion.

19 Q Okay. Do you remember what  
20 electrician was ultimately hired to do electrical  
21 work once LePatner Project Solutions were brought on  
22 board?

23 A No, I don't.

24 Q Do you know whether there was more  
25 than one electrician that was considered?

1 B. Lapatner

2 A I don't have any recall.

3 Q Were you involved personally in  
4 checking any references for any electricians that  
5 may have been proposed?

6 A I don't remember any question that  
7 came to me about who was ultimately selected. I  
8 would have been involved in signing off on somebody,  
9 but not the approval process or vetting somebody  
10 because it just would not have come up to me, unless  
11 they were asking me to take a final look at it.

12 Q So that would be at Francisco's  
13 level?

14 A Yes. And ultimately Jamal and  
15 Julia's because we would only make a recommendation.  
16 We weren't hiring people, we were making  
17 recommendations.

18 Q LePatner did not hire anybody  
19 directly on this project; correct?

20 A No. Because when we brought in  
21 engineers, we had them meet -- we had them inspect  
22 to get an idea for us, courtesy, no charge, so we  
23 could bring them to speak with Jamal and Julia and  
24 they would make the decision to bring them on.

25 Q Flip to the bottom of page two --

1 B. Lapatner

2 never mind.

3 A I want to correct something.

4 Q Okay.

5 A That first walkthrough, it looks like  
6 the Mark who was with us, it appears he may have  
7 been a York principal. On the fourth page of this  
8 Exhibit 4, Jamal writes to me on December 1st,  
9 "Sounds like an excellent suggestion with regard to  
10 Greenwich Town Hall. Mark was always very elusive  
11 on the 'inspections' and the 'permits.' Things took  
12 a very long time and seemed always to have trouble.  
13 Now perhaps we know why, and the MEP engineer is  
14 essential to know that the house is safe to live in.  
15 Clearly, the heating situation needs to be addressed  
16 ASAP."

17 Q So you're reading from the fourth  
18 page of Exhibit 4; is that Jamal's response to your  
19 prior e-mail, it looks like?

20 A I believe that's correct. He is  
21 writing in the evening of that day.

22 Q You mentioned Paula Fox in some  
23 earlier testimony. Who is Paula Fox?

24 A David Peer apparently recommended or  
25 brought her on or she worked with David, there was



1 B. Lapatner

2 some alliance there, who we were told was the  
3 interior designer; rugs, carpets, curtains, drapes,  
4 that sort of fishing. Over time, when we started to  
5 inquire or because Jamal and Julia would say:  
6 "We're getting a shipment of furniture." We would  
7 see things arriving that were not a question of good  
8 taste or bad taste, were questions of why would you  
9 order that until the room had been finished, in  
10 terms of size and scale and other things that we are  
11 sensitive to.

12 Over time, we questioned Julia and  
13 Jamal and said, "I think you ought to stop her from  
14 delivering or stop her from ordering things until  
15 you have a better picture of how we are going to use  
16 that room, what it was going to look like, because  
17 she may have been premature and it's going to cost  
18 you a lot more money to undue."

19 Q Was she removed from the project  
20 during the time you were there?

21 A I don't remember.

22 Q Did you recommend a new interior  
23 design for the project?

24 A Yes.

25 Q Who did you recommend?

1 B. Lapatner

2 A Solely with respect to the basement  
3 work, after David Peer had ordered the demolition of  
4 walls down there that affected electrical lines,  
5 plumbing lines, heating ducts, I finally expressed  
6 total frustration to Jamal and Julia. I said, "You  
7 can't do this. What he just did in knocking out  
8 these walls as you came down the basement steps,  
9 caused untold damage to existing work and things  
10 that they told us were going to be designed and  
11 built."

12 There was a wine storage room. There  
13 was a room for children that was going to be an area  
14 where children could hold plays in. There were  
15 several areas of very large basement area, and he  
16 just came in and told people to demolish.

17 So I said, "You have got to listen,  
18 you need to design as a whole."

19 And they said, "Do you have a  
20 recommendation?"

21 I said, "I have a lovely woman, very  
22 talented. Her name is Daisy Marks, an interior  
23 designer, not an architect, just meet with her.  
24 Meet with her, let her see this space."

25 They did. To my knowledge, they were

1 B. Lapatner

2 very happy with her and she had designed something  
3 that they were very pleased with. I didn't see it  
4 get finally built.

5 Q Do you remember when Daisy was  
6 brought on?

7 A I'll bet on this timeline, February.  
8 It was wintertime. I remember because I think I saw  
9 her in the house and she had a big fur hat on, like  
10 this. She is a small woman, so a hat to keep her  
11 head warm.

12 Q At some moment in time, did you  
13 recommend the termination of some of the  
14 subcontractors?

15 A As I said, I believe, at some point,  
16 we were very frustrated by the work of some of the  
17 subcontractors and did recommend that they be  
18 terminated.

19 Q Do you recall what trades, not  
20 necessarily what names?

21 A No. You asked that previously and I  
22 couldn't recall.

23 Q I am just going to show you what has  
24 been marked as Exhibit 9 at Mr. Rivera's deposition.  
25 This purports to be a letter from you, December

1 B. Lapatner

2 12th, 2013, from you.

3 Did you send this letter?

4 A I believe so.

5 Q You're smiling. I am questioning, is  
6 there something that you find --

7 A This is a formality. Once we had  
8 terminated or recommended termination on November  
9 26th of York, by definition, the subs were  
10 terminated, but we did not -- I said, Julia and  
11 Jamal, I said, "The subs appear not to be aware of  
12 this. The ones we want to keep on, we will keep on.  
13 They will be directly under you, but the subs you  
14 want to formally put on notice of, you have to tell  
15 York, because they are under contract to York."

16 So this was just a way to say tell  
17 them they are not working anymore. They are not  
18 going to be needed, they'll be terminated. In  
19 effect, you should have already told them they are  
20 terminated, but now, here's the ones; so that was  
21 the letter, as a formality.

22 Q Well, in the original termination  
23 letter to York, didn't you indicate that under the  
24 provisions of the contract, you were reserving the  
25 rights to assume the contractors and the

1 B. Lapatner

2 subcontractors?

3 A Yes, that's correct, and they did not  
4 object. Now, Jamal is talking to them. He says:  
5 We are going to keep you on. I would like you to do  
6 that work with LePatner Project Solutions on your  
7 numbers so we can figure out what we owe you, as  
8 opposed to what we paid York who didn't pay you,  
9 because we are not going to make those payments.

10 The point I was trying to make, so  
11 this was in furtherance of which subs were  
12 determined should go forward and which ones should  
13 be pushed aside.

14 Q So you specifically named them, and  
15 they're in the second paragraph, which subs?

16 A Yes.

17 Q And do you recall, it appears to be  
18 three electrical subcontractors and an HVAC  
19 subcontractor. Correct?

20 A Yes.

21 Q Do you know what part of the work ATA  
22 Electrical had done?

23 A No.

24 Q How about Gunzi Electrical, G U N Z  
25 I?

1 B. Lapatner

2 A No.

3 Q It's spelled G U N Z I in the letter.  
4 I think it might be G U N Z Y, in reality; but  
5 that's okay.

6 A I yield to your spelling.

7 Q I don't know for sure, but I think  
8 so.

9 How about Country Air Heating and  
10 Cooling, do you know what they did?

11 A I would only assume that's the HVAC  
12 contractor.

13 Q Do you know what work was performed  
14 on the HVAC under York's contracts and change  
15 orders?

16 A Not as I presently sit here. If I  
17 was shown a document, it would recall my  
18 recollection.

19 Q Do you know what MD Grace Electrical  
20 is?

21 A Not specifically what their scope  
22 was.

23 Q Do you think this encompassed all of  
24 the electricians that had done work under York?

25 A Well, in light of the statement that

1 B. Lapatner

2 John Santoro was putting together candidates for new  
3 electricians, I would assume it was a clean sweep,  
4 but that only showed part and parcel of another  
5 level of the incompetence of York; that they would  
6 have parsed out the electrical work to three  
7 separate subcontractors in one residential project.  
8 There would have had to have been really good  
9 reasons why they did that. The only reasons that  
10 would ever lend themselves to this being done on  
11 this project was he didn't pay people, so he would  
12 have broken out the scope to be smaller than one big  
13 scope, let's call it \$200,000 worth of work to three  
14 people, so that if he didn't pay them 10,000 or  
15 15,000, they would stay working. If he didn't pay  
16 50,000 to somebody who is a sub, they would walk off  
17 the job, and apparently he wasn't paying them made  
18 them walk off the job.

19 Q Is this an assumption on your part or  
20 do you know this?

21 A There's references here that we had  
22 trouble getting the electricians to show up on the  
23 job. So when you see three electricians on a job,  
24 it better be good reasons why you've broken up that  
25 scope of work because there is a possibility that

1 B. Lapatner

2 you will not get the same level of work on all three  
3 in dealing with very small electricians, not a large  
4 electrical company.

5 Q Did you know Gunzy Electric was hired  
6 specifically to do the generator?

7 A I wouldn't know.

8 MR. HARRINGTON: Off the record.

9 (Discussion held off the record.)

10 BY MR. HARRINGTON:

11 Q Let me just ask a few more questions.  
12 I will show you what was marked as Exhibit 10 at Mr.  
13 Rivera's deposition, and this appears to be four  
14 different project progress reports with different  
15 dates, obviously.

16 Do you know what these are?

17 A Yes.

18 Q These are project reports that were  
19 prepared by?

20 A Prepared by our whole team. We  
21 reviewed them, pulling from different sources to  
22 give a summary of the different scopes of the work  
23 that we were doing for the client.

24 Q They are all stapled together, but  
25 for the record, I see one that is dated December 13;



1 B. Lapatner

2 one, report 3, is dated January 3, 2014; 4 is  
3 January 13, 2014; and then the fifth one, February  
4 1st, 2014. There doesn't appear to be one number 2.  
5 Do you have any recollection of whether or not there  
6 was a formal report number 2?

7 A I am sure there was. I am happy to  
8 get back with Francisco, pour through our records  
9 and see if it got attached to something else.

10 Q Do you know if there are any reports,  
11 project progress reports, after number 5 in this  
12 project?

13 A What date was the number 5.

14 Q February 1st, 2014?

15 A I would have to check on that.

16 Q Are these the project progress  
17 reports that you had referred to in your earlier  
18 testimony as setting forth the things that you were  
19 finding on a weekly basis?

20 A Yes. This was a general overview so  
21 that they had some document that showed where we  
22 were focusing on and what was something that we are  
23 going to be needing to do some further work on.

24 Q You said this was prepared by the  
25 whole team?

1 B. Lapatner

2 A Yes. Francisco would have had all of  
3 his notes. He would also have spoke with the  
4 subcontractors, and then we would have come back at  
5 the end of a period of time and said: Let's go  
6 through this, what is the summary that we would  
7 give, and we would all agree and then it would be  
8 written down.

9 Q His testimony was that he had  
10 actually prepared the narrative and then he  
11 submitted it to you because you were the one, you  
12 were the person that dealt directly with the client,  
13 before it would go to the client?

14 A Of course.

15 Q Is that accurate?

16 A Yes. He had met with the subs. We  
17 talked about whatever those issues were. We are  
18 trying here to highlight issues. Some of these  
19 letters are much more detailed to the client than  
20 these reports, but we were trying to give a snapshot  
21 of where the project is at a point in time.

22 Q So I guess we are going to suspend.

23 A Yes.

24 (Whereupon at time 2:30 p.m., the  
25 deposition was concluded.)

C A P T I O N

The Deposition of BARRY B. LEPATNER, ESQ, taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

The Deponent will read and sign the transcript of said deposition.

C E R T I F I C A T E

STATE OF \_\_\_\_\_ :

COUNTY/CITY OF \_\_\_\_\_ :

Before me, this day, personally appeared BARRY B. LEPATNER, ESQ, who being duly sworn, states that the foregoing transcript of his Deposition, taken in the matter, on this date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition.

\_\_\_\_\_  
BARRY B. LEPATNER, ESQ.

SUBSCRIBED and SWORN to before me this \_\_\_\_\_  
Day of \_\_\_\_\_, 2019, in the  
Jurisdiction aforesaid.

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary Public

DEPOSITION ERRATA SHEET

CASE CAPTION: JAMAL NUSSEIBEH, JULIA NUSSEIBEH vs.  
LEPATNER PROJECT SOLUTIONS, ET AL.

DEPONENT: BARRY B. LEPATNER, ESQ.

DEPOSITION DATE: October 24, 2019

To the reporter:

I have read the entire transcript of my Deposition  
taken in the captioned matter or the same has been  
read to me. I request for the following changes be  
entered upon the record for the reasons indicated.  
I have signed my name to the Errata Sheet and the  
appropriate Certificate and authorize you to attach  
both to the original transcript.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

BARRY B. LEPATNER, ESQ.

## I N D E X

Witness: BARRY B. LEPATNER, ESQ.

Page

Examination by MR. HARRINGTON

5

## E X H I B I T S

Exhibit No.	Description	Page
22	E-mail witness sent to Plaintiffs	
	11/13/13	17
23	E-mail re documentation sent after	
	site visit	29
24	Response to E-mail, Exhibit 23	36
25	E-mail from witness to Plaintiffs	
	sent 11/22	41
26	Project Meeting Minutes, 1/6/14	105
27	Project Meeting Minutes, 1/14/14	105
28	Multiple bills stapled together	113
29	Termination letter to York	117

C E R T I F I C A T E

STATE OF NEW YORK )

) ss.

COUNTY OF SUFFOLK )

I, MONIQUE CABRERA, a Shorthand (Stenotype)  
Reporter and Notary Public for the State of New York,  
do hereby certify that the foregoing Deposition, of the  
witness, BARRY B. LEPATNER, ESQ., taken at the time and  
place aforesaid, is a true and correct transcription of  
said Deposition.

I further certify that I am neither counsel  
for nor related to any party to said action, nor in any  
way interested in the result or outcome thereof.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 4th day of November 2019.

---

MONIQUE CABRERA

Court Reporter